



Views of  
Local Governments on the  
Recommendations of the  
Indian Statutory Commission  
1930



CALCUTTA: GOVERNMENT OF INDIA  
CENTRAL PUBLICATION BRANCH  
1930

AGENT IN PALESTINE:—Steinmetzky Jerusalem.







## Views of Local Governments on the Recommendations of the Indian Statutory Commission, 1930.

Letter to all local Governments of Governors' Provinces (except Burma),  
No. F. 67/30-R., dated the 24th June 1930.

I am directed to address you on the subject of the recommendations contained in the Report of the Indian Statutory Commission.

2. As the Government of Madras/etc., are aware, the Indian Constitutional Conference in London is to be held on or about the 20th October 1930. It is essential that the Government of India after considering the views of local Governments should submit their own advice to His Majesty's Government on a date not later than the 13th September 1930. In order that they may be able to do so the Government of India desire to be in possession of the recommendations of local Governments not later than the 15th August 1930. The Government of India will, therefore, be glad if the Government of Madras/etc., will furnish the Government of India with their views at the earliest date before the 15th August convenient to them.

3. The recommendations of the Indian Statutory Commission are contained in Volume II of their Report. I am to invite the Government of Madras/etc., to express their views on any of the recommendations which appear to have a direct interest for them. I am also to indicate particular matters which must obviously engage their attention. These particular matters are the recommendations contained in

- Part I, Chapters 2 and 5;
- Part II;
- Part III, Chapter 2;
- Part IV, Chapters 1 and 4;
- Part VIII;
- Part IX; and
- Part X.

(As the recommendations contained in Part X of the Report affect the position of the various High Courts, the Government of India will be glad if the Government of Madras/etc., will obtain the views of the Madras/etc., High Court on these recommendations and communicate them to the Government of India.)

4. As it is the intention of the Government of India to submit to His Majesty's Government the views of local Governments along with their own, it will be convenient if views are expressed in broad outline without over-elaboration of detail. It would greatly facilitate the examination and consideration of the opinions submitted by the local Government if, so far as is possible, they are arranged in the order in which the subjects are dealt with in the report.

5. Finally I am to say that the Government of India would be glad if the Government of Madras/etc., would include in their report to this reference an estimate of the reception which the recommendations of the Commission have received in the province.

---

Letter to the Chief Secretary to the Government of Burma, No. F. 67/30-R., dated the 24th June 1930.

I am directed to forward, for the information of the Government of Burma, a copy of a letter No. F. 67/30-R., dated the 24th June 1930, addressed to other local Governments on the recommendations of the Indian Statutory Commission. It will be seen that the Government of Burma are concerned particularly with Part VI of Volume II of the Report and the appendix to Sir Walter Layton's Report (Part VIII). I am to request that the views of the local Government on the recommendations contained in these parts of the Report may be submitted to the Government of India at the earliest date not later than 15th August 1930, convenient to the Government of Burma.

2. I am also to invite an expression of any views which the Government of Burma may desire to make on the other recommendations of the Commission.

---

Letter to the Registrar, High Court, Calcutta, Appellate Side, No. F. 67/30-R., dated the 24th June 1930.

I am directed to refer to Part X, Volume II of the Report of the Indian Statutory Commission on the subject mentioned above, and to say that the Government of India would be glad to receive the views of the Hon'ble the Chief Justice and Judges on the recommendations contained therein. I am to request that a reply to this letter may be

sent so as to reach the Government of India not later than the 20th July 1930.

2. I am to request that a copy of the High Court's reply be communicated to the Government of Bengal.

---

Letter to the Chief Commissioner, Coorg, Baluchistan, Delhi and Ajmer-Merwara, No. F. 67/30-R., dated the 24th June 1930.

I am directed to address you on the subject of the proposals in so far as they affect your province contained in Part III of Volume II of the Report of the Indian Statutory Commission. I am to request that your views may be communicated to the Government of India not later than the 15th August 1930.

---

Letter to the Chief Commissioner, North-West Frontier Province, No. F. 108/30-R., dated the 2nd August 1930.

I am directed to invite an expression of your opinion on the recommendations made in Chapter I, Part III, Volume II of the Report of the Indian Statutory Commission regarding the future form of government in the North-West Frontier Province. The Government of India are aware that you have had the question of constitutional reform in the N.-W. F. P. already under your consideration, and would appreciate an early reply if possible not later than the 20th August.

---

No. 978, dated Stonehouse Hill, the 11th August 1930.

From—G. T. BOAG, Esq., O.I.E., I.O.S., Additional Secretary to the Government of Madras, Public Department,

To—The Secretary to the Government of India, Reforms Office.

I am directed to reply to letter No. F. 67/30-R., dated the 24th June 1930, from the Joint Secretary to the Government of India, Reforms Office, to the Chief Secretary to the Government of Madras, in which the Government of India ask for the views of this Government on the recommendations made by the Indian Statutory Commission.

2. At the outset I am to say that these recommendations have been considered by His Excellency the Governor with his Executive Council and Ministers sitting together and that the views expressed in this letter are the views of the Government as a whole.

## PART I OF THE REPORT.—GENERAL PRINCIPLES.

3. The Madras Government in the Memorandum which they submitted to the Commission expressed their conviction that the ultimate form of government in India must be a federation which the Indian States can enter freely, and that to achieve this object the powers of the Central Government must be carefully defined and limited and all residual powers left to the component Provinces and States. The Commission accepts the view that the ultimate constitution of India must be federal; and in so far as their proposals involve a reorganization of British India on a federal basis, they are in accord with the views already expressed by the Government of Madras.

4. The Commission lays down two other general principles, *viz.*, (1) that the new constitution should, as far as possible, contain within itself provision for its own development, and (2) that throughout the period during which India is progressing on the road to complete self-government there must be full provision made for the maintenance and efficiency of the fundamentals of Government, especially for defence, for internal security, and for the protection of minorities. Broadly speaking the Madras Government accept both these principles and agree with them entirely in their application to the Provincial Government; but they cannot offer any opinion of real value upon the Commission's proposals regarding the Central Government, for they have not sufficient experience of the working of that Government.

## PART II.—THE GOVERNORS' PROVINCES.

### CHAPTER 1.—THE PROVINCIAL EXECUTIVE.

5. The first recommendation which the Commission makes in this part of its report relates to the need for a readjustment and redistribution of provincial boundaries and areas. The Madras Government have already expressed the opinion that the question of political reform should not be hampered with proposals for the rearrangement and regrouping of existing provinces. They still consider that the appointment of a Boundaries Commission with power to investigate every demand for the division of

a province on linguistic lines must inevitably delay the introduction of political reform; for it is only after the number and size of the provinces have been determined, that proposals can be evolved for their political constitution; the two processes cannot be undertaken simultaneously. The Madras Government are therefore against the appointment of a commission with authority to examine all cases in which demands have been made for the breaking up of existing provinces; but they would have no objection to the appointment of a commission whose functions were strictly limited to making minor adjustments of territory. This commission, if it is to be appointed, should get to work with as little delay as possible, so that it may complete its enquiry before the time comes to work out the details of the new constitution. I am to add that this Government consider that the present provisions of the Government of India Act with regard to the constitution of new provinces [section 52-A (1)] and the alteration of boundaries of provinces (section 60) should be retained.

6. As regards the Provincial Executive, the Government of Madras accept in the main the proposals made by the Commission, which differ very little from those put forward by this Government. They agree that the division into reserved and transferred subjects should disappear, and that all subjects alike should be in the common category of provincial subjects. They agree that the provincial cabinet should be unitary and jointly responsible to the legislature; and they also agree that Ministers' salaries should be fixed by an Act of the legislature, and should not be liable to reduction or denial by a vote in supply. While, however, the Commission would not insist upon there being a Chief Minister, the Madras Government consider that it is necessary that there should always be a Chief Minister; and they would provide that no person other than an elected member of the legislature should be appointed to the Ministry except on the recommendation or with the consent of the Chief Minister; other Ministers should be appointed on the Chief Minister's recommendation. The Madras Government consider that the Governor should not ordinarily preside over a meeting of the Cabinet but that he should have the right to do so in exceptional circumstances. He should be supplied with notices of meetings and the agenda of business, and a transcript of the proceedings should be sent to him after each meeting. The Madras Government agree with

the Commission that the Governor should have the power to suspend any decision of the Cabinet pending its reconsideration at a subsequent meeting.

7. The appointment of an official as Secretary to the Cabinet was recommended by the Government of Madras in the Memorandum which they submitted to the Commission; but the Commission in commending the suggestion thinks that it ought not to be expressed in mandatory or statutory form. This Government are still of the opinion that the appointment is necessary. The Secretary should be appointed by the Governor; he should be under the control of the Chief Minister; and, in order to prevent any suspicion or mistrust either between the Ministers and the Governor or between the Ministers and the Secretary, he should not have direct access to the Governor without the knowledge of the Chief Minister. They would further suggest that as it is essential that the Governor should be kept informed not only of the legislation which is proposed but also of the work of administration, the Secretary to the Cabinet should be kept informed by the Secretaries of the various departments of all important administrative proposals.

8. The Government of Madras accept the recommendations of the Commission as to the powers which should be given to the Governor on the administrative side to overrule his Cabinet. They would suggest that the wording of clause (1) in paragraph 50 of the Report should be brought into agreement with that of the Government of India Act by the addition of the words "or of any part thereof" after the word "province". The Government also accept the recommendations of the Commission with regard to the powers to be given to the Governor to deal with a state of emergency.

9. The Commission's recommendation regarding the transfer of "Law and Order" is in accordance with the proposals made by this Government and is acceptable to them.

## CHAPTER 2.—THE PROVINCIAL LEGISLATURE.

10. This Government accept the Commission's recommendation that the maximum life of the provincial councils should be extended to five years. They agree generally with the Commission's proposals regarding the size of provincial

councils; they would, however, observe that the exact size of the council must depend upon the extent to which the franchise is widened, and that it should be an instruction to the Franchise Committee to make proposals for the strength of the provincial councils.

11. In the matter of communal representation, the Madras Government agree with the Commission that for *Muhammadans* separate electorates must continue until the Muhammadans themselves agree to surrender the privilege. The Madras Government also agree that there is no need to continue to reserve seats for *Non-Brahmans* in Madras.

12. The Commission's proposal for the representation of the *Depressed classes* by the reservation of seats in general constituencies is, in the opinion of the Madras Government, impracticable; it must involve large constituencies; the election of the representatives of the depressed classes will be made mainly by persons who do not belong to them; and the representatives will therefore depend for their seats on the votes of other than members of the depressed classes. I am to say that the Government adhere to the view expressed in their Memorandum to the Commission, that separate electorates of the depressed classes should be created wherever possible, and that for the rest the representation of these classes should continue to be by nomination. This Government also wish to emphasize their objection to any reduction of the representation of this class of the population.

13. The Commission proposes to continue the representation of *Europeans* and *Anglo-Indians* by means of separate electorates. This proposal is in agreement with the views already expressed by the Madras Government and is accepted by them.

14. For *Indian Christians* the Commission proposes representation in Madras by the reservation of seats. At present this community is represented by means of separate electorates; and the Madras Government adhere to the view, to which they gave expression in their Memorandum to the Commission, that a community which has once enjoyed the privilege of separate electorates should not be deprived of that privilege against its will. The Commission has recognized the force of this claim in the case of Muhammadans, and it is inconsistent to ignore it in the case of Indian Christians.



15. This Government support the Commission's recommendation for the abolition of the *official bloc*, and to permit experts who are not members of the Council to appear in Committees of the Council but not on the floor of the House.

16. With regard to *University representation*, I am directed to observe that the Commission makes no explicit reference to the point urged by this Government, *viz.*, that in future the electorate should be the members of the Senate and not the general body of graduates. The Government of Madras desire to secure the representation of a true academic or educational standpoint which can only be attained through the change which they have suggested, and they would press for the acceptance of their proposal.

17. This Government accept the recommendation of the majority of the Commission that the representation of *Commerce* and *Planting* should be maintained as at present. They also accept the proposals of the majority of the Commission with regard to the special representation of *Labour*,

18. The Commission recommends that the special electorates for *Landholders* should not be continued, and that if a sufficient number of candidates of this class are not returned by general constituencies, the Governor should have discretion to add by nomination such number as will bring their representation in the Council up to the proportion now guaranteed to them. The Government of Madras consider that the Commission was acting on a wrong assumption when it considered that landholders would necessarily exert such influence that their return would be assured and that therefore there was no necessity for a separate electorate; the signs of the times tend to the other direction, and it is extremely doubtful if in the future landholders will be able to exercise the same influence as at present. There is a danger that landholders, if they know that they are sure of obtaining a certain number of seats by nomination, will not take the trouble to stand for election. And rather than run the risk of a Council in which landholders are represented by nominated members alone, the Government would prefer to continue their special electorates, as they originally suggested.

19. The Government accept the Commission's proposals for the representation of *Women*.

20. The Commission recommends that the Governor should have the power to *nominate* members to represent

certain special classes, *viz.*, the depressed classes, Anglo-Indians, Indian Christians and landholders, in case adequate representation cannot be secured by means of election. The Government of Madras, as has been stated above, would prefer that Anglo-Indians, Indian Christians and landholders secured their representation by means of separate electorates; they recognize the need for nomination in the case of the depressed classes and also for the backward tracts. Over and above these special cases the Commission would give the Governor power to nominate a number, between 5 and 10 per cent. of the total fixed seats, with the object more particularly of ensuring better representation of women and of labour. The Madras Government, while accepting this recommendation, would limit the maximum number of these nominations to 5 per cent. of the total number of seats.

21. The Government of Madras accept the proposals in paragraphs 94 and 95 of the Report to empower provincial legislatures to initiate amendments of the constitution. And they would add to the subjects enumerated in paragraph 95, as falling within the scope of a "constitutional resolution," a fourth subject, *viz.*, proposals to set up a second chamber. (Please see paragraph 28 below.)

22. The Government also agree to the Commission's recommendations to continue the present method of securing a proper distribution of legislative topics between the Central and Provincial Legislatures, and to maintain the Governor's present powers in relation to assent to Bills and to their reservation and return. They accept also the proposals in paragraphs 97 and 98 of the Report that in the matters over which special executive power is reserved to the Governor, he should also have the power by certification to secure the passage of rejected Bills and to restore rejected grants; and that in cases of emergency, when the legislature cannot or will not function, the Governor should have the exceptional powers of legislation by ordinance and of authorization of expenditure over the whole provincial field.

23. The Commission considers that in the normal constitutional system proviso (b) in section 72-D (2) will have no place. It must, however, be remembered that it is possible that an emergency may arise, when the Legislative Council is not in session, demanding immediate expenditure for which there is no provision in the budget. Under this

proviso the Governor now has the power to authorize such expenditure. The Government of Madras consider that the power should be retained, but that it should vest in the Cabinet instead of in the Governor.

### CHAPTER 3.—THE FRANCHISE.

24. In the Memorandum which they submitted to the Commission the Government of Madras expressed the opinion that the time has not come for any extension of the franchise. The Commission, however, has found that "the present franchise is too limited in scope to provide the material from which to build any adequate scheme of representative Government," and recommends that a new franchise committee be set up with instructions to frame such a scheme as will enfranchise about 10 per cent. of the total population, *i.e.*, more than treble the present number of voters. The chief arguments which lead the Commission to this conclusion are (1) that the present limited franchise operates unfairly as between different classes and creeds, (2) that there is a large number of literate persons who have not got the vote, and (3) that those below the present line of qualification are in many cases just as fit for the vote as those who have it. I am to say that the Government of Madras admit the force of these arguments, especially that based on the number of literates who are not enfranchised; they agree that there should be a limited extension of the franchise, and that the details should be worked out by a franchise committee, who should be instructed to add to the present qualifications one based on education of a fairly low standard.

25. A woman under the present rules may be registered as a voter, if she has the property qualifications which entitle a man to registration. The Madras Government agree that in addition to this property qualification there should be for women over twenty-one as well as for men a qualification based on education; they consider that the wife of a man who has a property qualification to vote should be enfranchised only if she is qualified independently of her husband; to enfranchise the illiterate wife of a man qualified to vote will simply be giving him two votes instead of one. For widows the Government agree with the Commission that those whose husbands at the time of death had a property qualification should be enfranchised; those who

have the educational qualification will in any case have a vote.

26. In paragraph 109 of the Report the Commission refers to the recommendation in paragraph 95 that provincial councils should after ten years be empowered to initiate measures for further extensions of the franchise, and adds a further recommendation that after fifteen years another franchise committee should review the progress made and, unless 20 per cent. of the population is by that time enfranchised, devise means of accelerating the rate of progress. The Government of Madras have accepted the recommendation in paragraph 95 of the Report; but they do not agree to the proposal that a second franchise committee should necessarily be appointed after fifteen years; they regard this proposal as inconsistent with the principle laid down by the Commission that the new constitution should contain within itself provision for its own development; they consider that the arrangements proposed in paragraph 95 of the Report afford adequate facilities for the constitutional plant to grow of itself; and they see no need to provide that in fifteen years a body from outside should be appointed to pull up the plant and see how it is getting on.

27. The Government of Madras accept the recommendation that limits should be prescribed by rule for election expenses, though they are not altogether confident that such rules will be successful in preventing corruption.

#### CHAPTER 4.—SECOND CHAMBERS.

28. On this question the Commission has not been able to make an unanimous recommendation one way or the other. In the Memorandum which they submitted to the Commission, the Madras Government did not advocate a second chamber for the reason that "there are no elements or interests which do not or would not contribute to a single house and from which a second or revising chamber could be formed." While they agree that it is, in theory, possible for all the interests of the province to obtain representation in the Legislative Council, the Government recognize that there is a large stratum of "solid" people, not merely big zamindars or other landholders, but also bankers, professional or business men, merchants and retired officials, to whom the rough and tumble of popular political contest is distasteful, but to whom the second chamber would afford a

suitable forum. From among these people it would undoubtedly be possible to find the material necessary for a small second chamber such as that suggested at the end of paragraph 115 of the Commission's Report. The Government also consider that a second chamber might perform many useful functions, either in exercising a moderating influence that may render the Governor's personal intervention unnecessary or in supporting the Governor against the vagaries of the lower house. In spite of these considerations, however, the Government have come to the conclusion that it is better at present not to dissipate such political talent as now exists in the province more widely than between the local Legislative Council, the Central Assembly and the Council of State. They recognize that circumstances may create a demand for a second chamber, to act as a check on extravagant measures adopted by the Legislative Council and to form a buffer between the Legislative Council and the Governor; but they would leave it to the Legislative Council itself to initiate such proposals; and they would therefore include proposals for the setting up of a second chamber among the objects of the "constitutional resolution" which the Commission proposes, in paragraph 95 of its Report, to empower a provincial legislature to carry.

29. The Madras Government are not convinced that the expert revising body suggested by the Commission in paragraph 117 of the Report would serve any useful purpose. The Advocate-General is usually a member of the Select Committees which consider legislative proposals in detail and his advice is taken at every stage of the proceedings; the final drafts of legislative measures are examined by the departments of the Secretariat who consider their administrative effect, and, if they think it necessary, consult the Advocate-General upon questions of law or drafting. It is therefore superfluous to set up a special body to perform these functions. The Government, however, recognize that the need for such a revising committee may declare itself in future and they would not object to give provincial Governments and legislatures the power to create such a body.

### PART III.

#### CHAPTER 2.—THE BACKWARD TRACTS.

30. The Madras Government are concerned with two backward tracts.—(1) the Laccadive Islands and Minicoy,

which have been wholly excluded from the present constitution, and (2) the Agency tracts, which have been partially excluded. The Government consider that the proposals made by the Commission for the administration of these tracts are clumsy and complicated. The Governor is to administer them as agent for the Governor-General in Council, but he is apparently to rely upon the Madras Government for his officers. The higher officers, for example, Collectors, Inspector-General of Police, Surgeon-General, etc., will come under the Governor as soon as they enter these tracts or deal with matters affecting them; for subordinate officials the Governor will have to apply to the appropriate Minister for personnel. If there is trouble in an Agency and the Governor wants extra police, he will have to apply to the Home Minister who may reply that he regrets that in the disturbed state of the country he cannot spare any police. The Governor will have to take over the Agency work now done by the Revenue Member; and he will either have to have a Secretary for the backward tracts or his Private Secretary will have to take over the duties of such a Secretary.

31. The exclusion of these tracts implies a want of trust in the Cabinet of Ministers and the local legislature, and a feeling that they will not administer them properly and will not provide funds necessary for their development. The Government of Madras do not consider that there has been anything in the attitude of Ministers or the Legislative Council in the past to justify these apprehensions.

32. The Madras Government therefore consider that these areas should not be excluded from the Presidency or from the jurisdiction of the Ministers. They would recommend as special safeguards.

- (1) that no law or rule having the force of law shall be brought into force or altered or repealed in a backward tract or any part of it without the concurrence of the Governor; and
- (2) that if the Governor-General in Council is satisfied that a backward tract or any part of it is maladministered he may exclude it from the jurisdiction of the Madras Government and make other arrangements for its administration.

## PART IV.

## CHAPTER 1.—THE CENTRAL LEGISLATURE.

33. *The Federal Assembly.*—The Government of Madras recommended to the Commission that, while the separate constituencies should be retained for Muhammadans, Europeans, landholders and Indian Commerce, such general seats as may be allotted to the province should be filled by election made by the members of the provincial legislative council of persons, whether members of the council or not, who are qualified under the provincial electoral rules to be members of the provincial legislative council. The Commission's recommendation is that there should be no special constituencies, but that all the seats allotted to the province should be filled by election made by the members of the provincial legislative council by the method of proportional representation.

34. I am to say that with regard to the method of election to the Federal Assembly the Madras Government now are divided in opinion. One half favours the recommendations of the Commission on the general grounds urged in the Report, although all are agreed that among the general public the proposals are unpopular. The other half of the Government would prefer to keep the present method of election which they consider would more closely represent the views of the electorate. In these circumstances, the Government of Madras are unable to give any definite opinion.

35. *The Council of State*—The Madras Government in their Memorandum recommended no change as regards the Council of State. The Commission, however, would introduce indirect election either by a second chamber, if there is one, or by the members of the provincial council by the method of proportional representation. The Commission is led to this recommendation by the consideration that considerable difficulty has been found in forming an electorate, and that the basis of representation is altogether too narrow. Yet the Commission admits that the Council of State as now constituted contains members of experience and distinction who have made valuable contributions to the discussion of public affairs, and that it has been a steadying influence during a difficult transitional period. The Government of

Madras infer from these conclusions that the present electorate has been successful in sending to the Council of State candidates of experience and status, such as the Commission desires to secure; and on this ground they adhere to their recommendation not to make any change in the method of election or in the qualifications of electors.

36. *Legislative powers.*—The Commission recommends no change in the legislative powers of the Central Legislature. The sphere of the provincial legislatures will continue to be protected by the provision that the previous sanction of the Governor-General is required for the introduction of any measure (1) regulating any provincial subject, or any part of a provincial subject, which has not been declared by rule to be subject to legislation by the Indian legislature, and (2) repealing or amending any Act of a local legislature. The Commission looks forward to a growing tendency on the part of provincial legislatures to undertake—with the Governor-General's previous sanction—legislation on subjects allotted by rule to the centre; and it suggests that the Central Legislature can assist in extending desirable reforms by passing enabling statutes, which would be subject to adoption by resolution of a provincial legislature.

37. I am to say that the Government of Madras accept these proposals generally; they consider, however, that it should be laid down that the Central Legislature should not have power to legislate for matters which concern one province alone which has its own legislature; they would accept the Commission's recommendation that for certain purposes the Central Legislature should be able to legislate for all or a majority of the provinces, such legislation to be subject to adoption by resolution of a provincial legislature.

38. The financial powers of the Central Legislature will be considered when dealing with Part VIII of the Report—Sir W. Layton's proposals.

#### CHAPTER 4.—RELATIONS BETWEEN CENTRE AND PROVINCES.

39. The Government of Madras accept the Commission's recommendation that Governors, in the exercise of their special and emergency powers, should be subject to the control of the Governor-General.



40. The Commission's recommendations regarding control by the Central Government over provincial Governments are contained in paragraphs 182 to 186 of the Report. Except in one particular, the Madras Government accept those recommendations. They demur to the finding contained in the last sentence of paragraph 184, " We think it essential that the Central Government, in dealing with questions which vitally affect more than one province, should in the future have a more authoritative position than it now enjoys, constitutionally, in the transferred sphere," and to the means by which the Commission proposes to give effect to this finding. Clause (2) of the present rules under section 19-A of the Government of India Act reads " to decide questions arising between two provinces in cases where the provinces concerned fail to arrive at an agreement "; the corresponding " category " proposed by the Commission reads, " matters which may, in the opinion of the Governor-General, essentially affect the interests of any other part of India ". The Commission admits that under the present rules the sort of co-operation and co-ordination between provinces, which its proposals are intended to secure, has to some extent been achieved and that the imposition of specific central control is not the best way of achieving it. The Madras Government consider that the change recommended by the Commission gives the Central Government too wide a measure of control, and would prefer to retain the present rule, which has admitted the development of the co-ordination and co-operation which the Commission desires.

41. The financial relations between the Central and provincial Governments, and the measure of financial control which should be secured to the Central Government will be considered in connexion with the general financial proposals contained in Part VIII of the Report.

42. The Government of Madras in their Memorandum asked for a thorough examination of the present allocation of subjects between the Central and Provincial spheres, in order that the list of Central subjects might be strictly confined to those in which provincial boundaries have no place. The Commission has not accepted this suggestion, though it admits that experience may show from time to time the necessity of changes in the distribution. This Government still consider that the present allocation of subjects should be carefully examined, and I am to ask that arrangements

may be made for this to be done. I am to add that this Government accept the two specific recommendations of the Commission with regard to the C.I.D. organization and to factory legislation and labour welfare.

43. There is one matter concerning the relations between the Centre and the provinces to which the Madras Government alluded in the Memorandum which they submitted to the Commission, but which the Commission has left unmentioned, namely, the desirability of continuing the present system by which certain Central subjects are administered through the agency of the provincial Governments. The recommendation of the Madras Government was that in future the Governor, and not the Government, should be the agent of the Central Government. I am to say that the Government have given further consideration to this matter and are now of the opinion that it is not necessary for the Governor to be the agent of the Central Government. If the Central Government are not prepared to appoint their own officers to administer all Central subjects, they should arrange with local Governments to act as their agents; and the local officers of the local Governments should be employed in the administration of details; and for this agency work the local Governments might reasonably receive a subsidy from the Central Government. In short, the Government of Madras are now of the opinion that for the administration of such Central subjects as are not administered through officers of the Central Government, the Government, and not the Governor, should be the agent.

## PART V.—DEFENCE OF INDIA.

44. Although the Madras Government feel that the future of the army in India is primarily the concern of the Government of India, they wish to express the opinion, which is widely held, that the Indianization of the army should proceed more rapidly than at present. They realize that the reason for such slow progress is that suitable candidates are not coming forward for commissions. They would therefore suggest that in order to obtain a larger number of suitable candidates it is absolutely necessary to establish more schools on the lines of Dehra Dun and also an Indian Sandhurst. So far as the Commission deals with the use of the army by provincial Governments for the maintenance of law and order, it proposes to meet the

difficulty of placing British troops under the uncontrolled orders of elected Ministers by requiring that every demand for Imperial troops should be put forward by the express authority of the Governor, who should, as far as possible, satisfy himself as to their legitimate employment. I am to say that, in the opinion of the Madras Government, this provision will not work. In the first place it will impair the responsibility of District Magistrates and the Commissioner of Police for the maintenance of peace in their charges; and in the second place, as the Commission itself concedes, in cases of emergency it may not be possible to obtain the Governor's authorization before sending a requisition for troops. For these reasons the Madras Government consider that the normal procedure should be that which the Commission suggests for cases of emergency, *viz.*, that the Governor's subsequent personal endorsement should be obtained at the earliest possible moment for every application for military aid.

45. There is one other matter connected with the army upon which the Madras Government wish to lay stress, *viz.*, the need for the revival of the old Madras regiments. In Volume I, paragraph 116 of the Report, the Commission notices the remarkable variations in the contributions which provinces make to the Indian army. The Government of Madras would remind the Government of India that the pre-eminence of the Punjab and the United Provinces as recruiting grounds for the army is comparatively recent, and has been a natural consequence of the gradual reduction of the old Madras army till there are now only three Madras regiments left. The Madras army has a fine record of gallant and loyal service, and military traditions are still strong in many parts of the Madras Presidency. If the North India recruit is admittedly superior in physique, the Madrasi claims superiority in intelligence, which is likely to count for more in the future than it has done in the past.

46. The Government of Madras consider that the interest of the Province demands that the military tradition and the proved military capacity of the Madrasi should be recognized by the restoration of the old Madras regiments. So long as the army is an Imperial concern, it is obviously desirable that it should be associated by recruitment with as wide an area as possible; and the revival of the Madras regiments may also help towards the attainment of the goal mentioned in Volume II, paragraph 211 of the Report, the

possession by a self-governing India of military forces of its own; for the fact that at present such an overwhelming proportion of the army is recruited from the Punjab and the United Provinces is one of the obstacles to the formation of an Indian National Army on which the Commission has laid stress.

## PART VIII —INDIAN FINANCE.

### SIR W. LAYTON'S REPORT.

47. The Commission accepts the general principles of its financial assessor Sir W. Layton's scheme for the division of resources in British India between the Central and provincial Governments. The Madras Government are not of course able to say whether the premises on which Sir W. Layton bases his scheme are correct or not; but, assuming that they are correct, the Madras Government, subject to the observations made in the following paragraphs, are in general agreement with his proposals. The scheme is based on the assumption that Central revenues are likely to expand so rapidly as to yield a surplus of Rs. 14½ crores at the end of ten years. It includes—

- (1) proposals for the reallocation of existing revenues, and
- (2) proposals for new taxation (*a*) to be levied and spent by the provinces, (*b*) to be levied centrally and distributed to provinces according to origin, and (*c*) to be levied centrally at the request of the provinces and distributed according to population.

The proposals for the reallocation of existing revenue concern (1) excise on foreign liquor, (2) commercial stamps, (3) income-tax and (4) salt duty. As regards foreign liquor, the proposal is that the customs duty should be reduced to the standard luxury rate of 30 per cent. and that the provinces should be given the right of imposing further duties in the form of excises. It is estimated that by this change the revenue of Madras will benefit by Rs. 16·45 lakhs a year. As regards commercial stamps, the proposal is that the revenue from certain commercial stamps, which ought to be uniform throughout India, should be surrendered by the provinces to the Central Government. It is estimated that this would cost the Madras Government about Rs. 30

lakhs a year. Sir W. Layton shows that the losses and gains by the Central and provincial Governments from these two changes would approximately balance. But Madras stands to lose about Rs. 13½ lakhs a year; consequently other provinces are to benefit at the expense of Madras. The Madras Government, in their Memorandum, laid down the postulate that any adjustment of financial relations must not involve the sacrifice on the part of any province of any revenues now accruing to it, and stated that any loss which such adjustments might involve should be made good by an equivalent assignment. If no other changes in the distribution of the receipts from taxes are made at the same time, the Madras Government wish to press this claim for a balancing contribution, so that this adjustment may not involve the benefit of other provinces at the expense of Madras.

48. Sir W. Layton proposes to assign to the provinces half of the income-tax paid by residents of the provinces on their personal incomes. It is estimated that this will benefit the revenues of Madras by about Rs. 35 lakhs. The Madras Government have strongly objected to any allocation of income-tax based on the place of collection. The present proposal is not open to this objection, as the share of the personal income-tax is to be allocated to the province on the basis of the place of residence of the assessees. The Government accordingly accept this proposal.

49. Sir W. Layton further proposes that as soon as the resources of the Central Government permit, the proceeds of the salt duty should be transferred to the provinces. This proposal also is acceptable to the Madras Government.

50. The new taxation to be levied and spent by the provinces is (1) a surcharge not exceeding one-half of the share of the personal income-tax transferred to the provinces, and (2) a terminal tax. The Madras Government have no objections to urge against these proposals for new provincial taxation.

51. Sir W. Layton next proposes that the exemption from liability to income-tax now enjoyed by agricultural incomes should be withdrawn, and that the income-tax derived from this source should be distributed to the provinces according to origin. The proposal as it stands means that a province will be compelled to levy income-tax on agricultural incomes, although the Provincial Government may not consider it desirable or necessary, in order that

other provinces which need additional revenue may be able to obtain it. A serious objection to this proposal is that the Madras Government do not consider it equitable to tax the income from land held on ryotwari tenure, unless the income from land in permanently settled estates also is assessed to tax; and the levy of income-tax on the agricultural income of holders of permanently settled estates will certainly in Madras be regarded as a breach of the conditions under which the permanent settlement of the estates was carried out; for the sanad granted to every holder of a permanently settled estate contains the following clause:—

“ The British Government . . . resolved . . .  
to grant to zamindars and other landholders,  
their heirs and successors, a permanent property  
in their land in all time to come; to fix for ever  
a moderate assessment of public revenue on such  
lands which shall never be liable to change under  
any circumstances; to institute courts of judica-  
ture for the protection of these valuable rights;  
. . . . .”

It may, however, be noted that the fourth clause of the sanad contains the reservation that the permanent assessment of the land-tax in a zamindari is exclusive of “ all taxes, personal and professional ”; and it is arguable that the levy of income-tax is permissible under this clause.

52. The Government of Madras believe that the adoption of this measure will alienate the sympathy of the zamindars of the province, who have always stood by them, and will provoke excessive litigation. And for this reason they consider that no attempt should be made to levy income-tax on the agricultural incomes of the holders of these estates, without a complete examination of the conditions under which their estates are held and without coming to some amicable arrangement with the zamindars or their representatives. This Government, however, do not for this reason wish to prevent other provinces from levying the tax on agricultural incomes if they find it necessary and possible to do so. It does not seem to this Government to be necessary that this tax should be levied centrally. The only apparent reason why Sir W. Layton proposes to levy the tax centrally is that the withdrawal of the exemption from taxation of agricultural income will affect the rate at which mixed incomes are taxable; so that if in Madras agricultural

income remained exempt from taxation, a man who derives his income both from agriculture and from other sources might very probably pay income-tax on his non-agricultural income at a lower rate than a man in another province where agricultural income also is taken into account; and the Central Government would thus be a loser. This difficulty, however, can be surmounted if agricultural income, without being made liable to taxation, is taken into account in fixing the total income which determines the rate at which income-tax should be levied on the non-agricultural part of the income. This would mean that the income-tax authorities would have to *determine* the income of assesseees from all sources, including agriculture, but that the *levy* of income-tax on agricultural incomes should be left to be decided by the provinces concerned. The Government of Madras are prepared to accept an arrangement of this nature which leaves it to the discretion of the provinces to withdraw the exemption from taxation on agricultural income, but they are not prepared to accept the proposal put forward by Sir W. Layton that the Central Government should have the power to levy income-tax on agricultural incomes in all provinces, whether the provinces wish it or not.

53. The next proposal is for an excise duty on factory-produced tobacco and an excise duty on matches, to be levied centrally at the request of the provinces and distributed according to population. The Madras Government have no objection to the proposal to levy these two new taxes, if it becomes necessary to find additional revenue. The proceeds of these taxes when they are levied, and those of the salt duty when the Central revenues produce a sufficient surplus, are to go to a provincial fund. Proposals for changes in the taxes within the scope of this fund are to be considered by the Finance Ministers of the provinces meeting once a year as an Inter-Provincial Council. If the Finance Ministers of more than three provinces desire to increase or decrease the resources of the fund, it would be the duty of the Finance Member of the Central Government formally to move in the Assembly that the change may be made. The Government of Madras are doubtful whether it should be open to a minority of the Inter Provincial Financial Council to bring proposals regarding taxation before the Assembly. It seems to them that any proposal which had not the support of a majority of the Provincial Finance Ministers would not be at all likely to be accepted

by a majority of the Assembly; and they think that a minority should not have the power to initiate such proposals, which are certain to provoke considerable agitation.

54. Sir W. Layton does not state explicitly whether the residuary power of taxation should vest in the Central Government or in the provinces, but the general tenor of his report indicates that he intends to vest these residuary powers either in the provinces or in the class of taxation which he proposes to include in the provincial fund. The Government of Madras consider that there should be a clear provision in the constitution vesting the power to levy residuary taxation in the provincial Governments, subject to such control by the Central Government as may be necessary in order to safeguard the central sphere of taxation from encroachment by provincial taxation.

55. There remains the question of the general financial relations between the Central Government and the provinces. The Commission has deliberately refrained from suggesting any financial safeguards, except for the special purpose of enabling the Governor to secure supply over the limited field in which he holds in reserve special powers, or for carrying out directions which he may receive from the centre. It adds, however, that the Central Government should have the power to control borrowing by a provincial Government, to refuse a loan required by a province to meet a deficit, or, if need be, to impose discriminatory rates of interest in respect of any such loans which it grants. For the exercise of this control it is proposed that there should be a Provincial Loan Council consisting of the Finance Member of the Government of India and the Finance Ministers of the provinces; this Council would establish a borrowing programme, lay down regulations, and arrange terms. The functions of the Council will at present be advisory and on any question of withholding sanction for loans owing to a breach of the regulations, action will be taken by the Central Government after consultation with the Council. The Government of Madras accept this proposal for the establishment of the Provincial Loan Council.

56. The Madras Government, in their Memorandum, suggested that, in addition to the famine-relief fund maintained under Devolution Rule 29, an emergency fund of half a crore should be constituted to meet such emergency expenditure as the relief of distress caused by cyclones and floods. Neither Sir W. Layton nor the Commission has



noticed this suggestion; the Government of Madras consider that if a province is to be financially autonomous it must also be self-sufficient, and that a fund of this kind is essential if provincial autonomy and stability are to be preserved. I am therefore directed to press this matter again upon the attention of the Government of India.

57. The provincial accounts are at present kept by the Accountant-General, an officer of the Central Government. The Government of Madras are quite satisfied with this arrangement and would prefer that it continue. They would, however, if necessary, agree to enter into a contract with the Central Government to pay the cost of the Accountant-General's services.

58. The Government of Madras recommended that the Central Government continue to hold the balances of provincial Governments; and Sir W. Layton's recommendation is to the same effect. The Madras Government further recommended that the power conferred upon the Central Government by Devolution Rule 21, which has never been exercised, need not be retained. Sir W. Layton, however, points out that "the keeper of the cash will always have the salutary, if sometimes unpleasant, task of putting a check upon overspending by insisting that accounts are not overdrawn." Devolution Rule 21 simply gives the Central Government power to secure this object by fixing a figure below which the provincial balance shall not be allowed to fall. The Government of Madras accept the need for the retention of this power and have no objection to the continuance of Devolution Rule 21.

59. In their Memorandum, the Madras Government asked for an examination of possible means of strengthening the position of Ministers against the danger of financial irresponsibility on the part of the Legislative Council. Neither Sir W. Layton nor the Commission has mentioned this matter. The Madras Government are still convinced of the necessity of such protection for the Ministry, and would suggest, as a possible solution of the difficulty, the framing of a rule to the effect that no resolution of the Council involving the expenditure of public money shall be effective, unless the Council also passes a resolution to provide the funds necessary, and that such a money resolution shall not be moved by any member other than a Minister.

## PART IX.—THE SERVICES.

60. The Commission recommends that the Indian Civil Service and the Indian Police Service should continue to be recruited on an all-India basis by the Secretary of State, who should have power under a rule similar to rule 12 of the Devolution Rules, to require provincial Governments to employ these services in such numbers and in such appointments as he thinks necessary. This recommendation is at variance with that of the Government of Madras in their Memorandum to the Commission where they advanced the view that all the all-India services in the province should be provincialized. The Government have not been able to arrive at an unanimous decision on this matter; some members maintain the argument stated in the Memorandum, *viz.*, that "responsible self-government, if it implies anything, implies that the province must be free to recruit its own servants as and when it likes. There can be no imposing upon it a body of men recruited under regulations, from sources and on rates of pay prescribed by some outside authority"; those members who maintain this view would, however, allow the provincial Government to apply to the Government of India in advance each year specifying the number of European officers they desire to be recruited for them in Great Britain and the terms on which the provincial Governments are prepared to employ them; they recognize that this system will mean that the Central Government, instead of choosing recruits for its Secretariat from members of the services in the provinces, will have to arrange for direct recruitment; but they consider that this is not a heavy price to pay to secure complete control over their servants. Other members of the Government, however, admitting the importance of the considerations which have influenced the Commission in making its recommendation, would accept this recommendation to continue the present system of recruitment.

61. The Government have considered the arguments advanced by the Commission in favour of continuing the recruitment of the Irrigation and Forest Services on an all-India basis; but they see no reason to change the opinion expressed in their Memorandum that these services should be provincialized.

62. *Safeguards.*—The Commission recommends that the right to retire on proportionate pension should be continued

to all officers who might under the rules have so retired upon the introduction of the new constitution. These rules permit retirement on proportionate pension only to officers appointed before January 1st, 1920. In view of the very considerable changes in the conditions of service which must follow this revision of the constitution, the Government of Madras consider that the right to retire on proportionate pension should be extended to all members of all-India services. The Madras Government agree with the Commission that no limit of time should be prescribed within which the right must be exercised.

63. The Commission states in general terms its purpose to leave unchanged the rights and privileges of present members of the services, and to this end proposes to maintain the safeguards in the Act itself and to provide that changes in the statutory rules affecting the services should, as hitherto, require the concurrence of the Secretary of State's Council. The Government of Madras accept these proposals, but would add, in order to secure members of all-India services against supersession by members of a provincial service, a provision that all appointments to posts included in the cadre of all-India services in the province should be made with the concurrence of the Governor.

64. With regard to pensions, the Commission merely repeats and endorses the opinion of the Lee Commission, that if any statutory change should be made, involving the transfer of financial control in this regard from the Secretary of State in Council, adequate provision should be made for safeguarding pensions. The Government of Madras believe that recent threats to repudiate debt have caused considerable uneasiness in the services with regard to the security of pensions, which will not be allayed without some more definite guarantee than is proposed by the Commission; they would accordingly propose (1) that pensions should be given similar priority as a charge on the revenues of India as the public debt, and (2) that the right to commute should be extended to the whole pension, instead of half, subject to the condition that half the sum obtained by commutation should be spent on the purchase of an annuity in an insurance office approved by the Secretary of State. The uneasiness felt by members of the services with regard to their pensions extends also to family pensions and provident funds; and the Government of Madras would suggest that these funds should either be placed in the charge of the

Public Trustee in England or of trustees appointed by the Secretary of State.

65. The Government of Madras have already set up a *Public Service Commission* which meets all the conditions postulated in the Statutory Commission's Report. This Government agree that when the Governor's Executive Council disappears it will be necessary to amend the Act so as to make the appointing authority the Governor, instead of the Governor in Council.

## PART X.—THE HIGH COURT.

66. The Commission recommends that all High Courts should, for administrative purposes, be put under the Government of India. When the Commission put this suggestion to the Government of Madras, their reply was that the Government saw no reason for the transfer and that they considered that in Madras the local Government were better qualified than the Government of India to judge of the administrative needs of the High Court.

67. The Commission, finding that the Calcutta High Court is to some extent under the administrative control of the Central Government, while other High Courts are under that of the Governments of the provinces in which they are situated, observes that there is no possible justification for keeping up two systems, side by side, in British India; that the importance of maintaining the complete independence of the High Court Bench, not only in respect of private litigation, but in connexion with controversies in which the local administration may be involved, is overwhelming; and that cases may arise in which one High Court has to serve more than one provincial area. For these reasons the Commission comes to the conclusion that the best way of getting rid of the anomaly which places one High Court under the administrative control of the Central Government while the others are under that of their provincial Governments is to put all the High Courts under the administrative control of the Central Government, the expenses being borne on Central funds.

68. The Madras Government have consulted the High Court on this proposal; and I am to say that all the Judges are very much in favour of the recommendations of the Commission; they agree that it is highly desirable that both for

financial purposes and as regards administration the High Courts should be directly under the Government of India.

69. The Government of Madras are not convinced either by the arguments of the Commission or by the opinion of the Judges of the Madras High Court, that the change is necessary at present. They think that the anomaly observed by the Commission is sufficiently explained both by historical causes and also by the fact that the Calcutta High Court now serves the province of Assam as well as Bengal. They deny the insinuation that the independence of the High Court Bench is impaired by its subordination for administrative purposes to the local Government. And they do not consider it necessary now to anticipate circumstances in which the Madras High Court may have to serve more than one province. They hold that there are strong arguments against making any change. The centralization of the High Courts is inconsistent with the constitutional theory that the administration of justice is a provincial subject. There are also practical objections to the Commission's proposal; in the matter of the appointment of Judges to the High Court the only change recommended is that additional and acting Judges are to be appointed by the Governor-General instead of, as now, by the Government of India and the local Government; there is a possibility that the Governor-General may send to Madras a Judge from another province unfamiliar with provincial law or custom, for instance, with the land tenures of Madras, some of which are not only complicated but peculiar to this province; or again, the Madras Government have laid down rules for recruitment to the public service with the object of securing as far as possible that different communities obtain due representation; the High Court appoints District Munsifs; and unless the High Court remains under the administrative control of the local Government, it may not be possible to maintain in the judicial service the communal representation which is secured in all other provincial services. Again it is in the local Legislative Council that complaints against delays in the disposal of litigation, etc., are ventilated. It is the practice of the local Government to pass these complaints on to the Judges of the High Court, who so long as they are under the administrative control of the local Government, do pay attention to such representations; it is possible that if the High Court is removed from the local Government's administrative control, such complaints

may not receive the attention which is now paid to them. Seeing that to these considerations is added the fact that the administrative control of the High Court by the local Government has led to no complaint or abuse, the Government of Madras adhere to the recommendation made in their Memorandum that the present arrangements should continue.

70. I am to add that the Government of Madras wish to recommend that in any legislation affecting the status or constitution of the High Courts, the opportunity should be taken to remove the restriction now contained in section 101 (4) of the Government of India Act which requires that the Chief Justice must be a barrister.

## PART XI.—RELATIONS BETWEEN HOME AND INDIAN GOVERNMENTS.

71. The Commission proposes certain modifications in the powers of the Secretary of State over provincial Governments, corresponding to the extension of the field within which responsibility for the government of British India rests upon elected Indian legislatures. In matters which concern the province alone, the Secretary of State is to have the power to issue orders only in the limited class of cases in which special powers are reserved to the Governor. In matters which concern more than one province, *i.e.*, those matters in which the Governor-General in Council is to have powers of control over provincial Governments, the Secretary of State, in the exercise of his general powers of superintendence, direction and control of the Governor-General in Council, will have the power to issue orders through that authority. The Government of Madras accept these recommendations subject to the modification of "category" (2) in paragraph 182 of the Commission's Report, suggested in paragraph 40 above.\*

72. In conclusion the Government of India ask for an estimate of the reception accorded in Madras to the recommendations of the Commission. As the Government of India are probably aware, the Press, with the exception of the "Madras Mail," has been practically unanimous in its condemnation of the proposals. Most of the papers have

---

\* Substitute for "(2) matters which may, in the opinion of the Governor-General, essentially affect the interests of any other part of India", the present rule "(2) questions arising between two provinces when the provinces concerned fail to arrive at an agreement".

contented themselves with criticism in such general terms as "an insult to India," "a constitutional freak," "a scheme which implicitly turns down Dominion Status as unsuitable to Indian conditions." But "Justice," the principal organ of the Non-Brahman party, has published a series of articles criticising in greater detail such particular recommendations as the power given to appoint officials as Ministers, the powers reserved to the Governor, the retention of nominated seats in provincial councils, the appointment of an official as Secretary to the Cabinet and the retention of recruitment to the Indian Civil Service and the Police on an all-India basis. Throughout these articles the recommendations of the Commission are compared unfavourably with the proposals made in the Memorandum which the Madras Government submitted to the Commission. Articles in the "Hindu" have criticised especially the proposals regarding non-elected Ministers, the retention of non-votable expenditure and safeguards for members of the services. "New India," opposing the Report throughout, directs special criticism at the proposals regarding the Central Government, the army and the relations contemplated between British India and the States.

73. Muslims are dissatisfied with the safeguards proposed for their interests and are inclined to insist upon compliance with all their demands; and the depressed classes, while on the whole welcoming the proposals, are opposed to the recommendation that they should obtain representation by the reservation of seats in general constituencies.

74. Most of the individual opinions reported, appeared a day or two after Volume II of the Report was published, before there could possibly have been time for a careful study of the proposals. Most of these opinions condemn the Report, but a few individuals have found in it more to praise than to blame.

---

No. 1/161, dated Poona, the 13th August 1930.

From—C. W. A. TURNER, Esq., C.I.E., Reforms Officer, Political Department (Reforms Office),

To—The Reforms Commissioner, Government of India, Simla.

With reference to Mr. Lewis' letter No. F. 67/30-R., dated the 24th June 1930, on the subject of the recommendations contained in Volume II of the Report of the Indian Statutory Commission, I am directed by the

Governor in Council to forward herewith the views of the Government of Bombay on the recommendations of the Indian Statutory Commission, so far as they affect this Presidency.

2. In compliance with the request made in the last sentence of paragraph 4 of Mr. Lewis' letter I am dealing in this report with the recommendations of the Commission in the order in which they are dealt with in their report.

3. *Part I and Part II, Paragraph 38.*—The Government of Bombay agree that the future constitution of India should be permanent and, with necessary safeguards, should contain within itself the means for growth and expansion. They agree also that it should be re-organised on a federal basis. The Government of Bombay also accept the proposal for the appointment of a Boundaries Commission with a view to an enquiry into any desirable redistribution of the Provincial boundaries in India. In accepting this recommendation the Government of Bombay desire to express the hope that the appointment of a Boundaries Commission will not in any way delay the introduction of the reforms, and, in the event of the Boundaries Commission recommending numerous alterations in the present organisation of provinces and of these recommendations being generally accepted, suggest that the procedure should be so regulated as to give time for the new constitution to work without being disturbed at its outset owing to readjustments of provincial boundaries.

4. *Part II, Chapter I.*—With regard to the proposals for the composition of the provincial executive the Government of Bombay do not accept the recommendation that the provincial cabinet may include Ministers appointed from outside the Council. Though there is some force in the arguments put forward by the Commission in support of their recommendation, which is not without a precedent in the Dominion Constitutions, the proposal to include in a Cabinet, jointly responsible to the Legislature, members selected from outside the legislature, seems to the Government of Bombay to be opposed to the principle of responsible government. It will create the anomaly of there being in a cabinet jointly responsible to a legislature persons who will not have been drawn from it and who will not represent the choice of the legislature. They will not have any party or following in the Council on whom they



could depend for carrying out their policy. Though in theory responsible to the legislature, they will not be removable by it, and, being appointed by the Governor, will naturally look to him for support.

The Commission have expressly stated that the overriding powers of the Governor, apart from emergencies, will in future be exercised only for specified and limited purposes and that the emergency powers will be available only when there is a breakdown. The powers suggested for the Governor are wide and intended to meet all possible contingencies. Their actual exercise will depend on circumstances. In all constitutions there must be some ultimate authority empowered to carry on the administration in emergencies, and, in the provinces of India, the Governor appears to be the only authority to whom these powers can be entrusted. In fact, the Governor's responsibilities as the head of the provincial administration are so great that with him must remain all powers not expressly transferred to the Ministry or the legislature, and it would perhaps be better not to embody these powers in the rigid language of a statute. If, however, it is decided that they must be made statutory, the Government of Bombay are in favour of the powers (constitutional, overriding and emergency) suggested by the Commission but would modify their proposals to the extent and for the reasons set forth below :—

- (i) As representation by election has been suggested for the various communities and interests which are at present represented by nomination the Governor need not be given power to nominate members up to 10 per cent. of the total seats. Nomination should be resorted to only for the purpose of providing representation for such important classes and interests as are not likely to obtain representation by any practicable system of election, or to remove any gross inequalities of representation. To provide for these contingencies the Government of Bombay are of opinion that it will suffice if the Governor is given power to nominate members up to 5 per cent. of the total seats only.
- (ii) The Governor may be given power to make rules for the transaction of business in his cabinet as recommended by the Commission in paragraph

51 but it should be understood that before making or altering any such rules he will consult the Ministry.

- (iii) The Governor should have the power to override his Ministry for the purpose of securing the carrying out of any order received by the provincial government from the Government of India or Secretary of State, but it should be made clear that the primary responsibility for securing the carrying out of such orders shall normally lie on the Ministry and that it is only when the Ministry fails or refuses to secure the carrying out of such orders that the Governor should intervene.

I am to add that, in the opinion of the local Government, the period of 12 months up to which the Commission propose the Governor should be empowered to use his emergency powers (*vide* paragraph 65 of their report) is too long. They would prefer to fix the period at six months. They recognize, however, that within the period of six months it might be impossible to obtain the approval of Parliament expressed by resolution of both Houses and suggest, therefore, that the period within which the Governor may exercise his emergency powers should be fixed at nine months. I am also to suggest that item (2) in paragraph 50 which provides that the Governor shall have power to give directions in order to prevent serious prejudice to one or more sections of the community as compared with other sections requires clarification. The clause as it stands does not make it clear whether the overriding powers of the Governor are to be exercised in the interests of the minority communities only or of majority communities also, should occasion for the exercise of powers in their favour arise. In this connection I am to say that one Honourable Member and one Minister are of opinion that item (2) in paragraph 50 is not required and should be omitted.

5. *Part II, Chapter 2.*—The Government of Bombay agree that the future constitution should not be rigid or temporary, but consider that the principles of elasticity and permanency laid down by the Commission for the provincial governments should apply, with equal force, to the constitution of the Central Government which should also be made permanent and should contain within itself

provision for its future development. An inelastic and temporary constitution at the Centre is bound to affect the constitutional growth of the provinces and may even result in retarding their progress. They are also of the opinion that the Commission's recommendation for amendment of the provincial constitution by resolution contained in paragraph 95 of the Report is unsatisfactory. Apparently the power to be conferred on the provincial councils is limited to an amendment of the legislative machine in respect of the matters specified, and in the manner and subject to the conditions mentioned, in that paragraph. A resolution of the council even when it satisfies the conditions laid down by the Commission will still require the sanction of the Governor-General and possibly of the Secretary of State. In consequence of this procedure the constitution will lose much of that elasticity which it is the very object of the Commission to provide. The Government of Bombay consider that, subject to the safeguards mentioned in paragraph 95, a resolution which has been duly passed by the council and has received the assent of the Governor should have statutory force and effect. I am to observe that the power of amendment should extend not only to an amendment of the legislative machine but to a gradual expansion, subject to necessary safeguards, of the legislative and financial powers of the council also, and that it should be available to the provincial council after a lapse of five years instead of ten years as proposed by the Commission.

6. (1) As regards the retention of communal electorates, the majority of the Government of Bombay accept the recommendations of the Commission. One Honourable Member and one Minister consider that in place of the existing separate electorates for the Muhammadans there should be joint electorates with reservation of seats for them, or, if the Muhammadan community so desire, they may select a panel out of which the candidates may be elected.

(2) The proposals for the representation of the 'depressed' classes in paragraphs 78 to 80 of the Report are in the opinion of the Government of Bombay inadequate and will not satisfy the community which has been clamouring for special representation for the last 10 years. It is very doubtful whether candidates genuinely representative of the depressed classes will be elected in a general electorate in non-Muhammadan constituencies. The Government of

Bombay, therefore, consider that the depressed classes should be provided with separate electorates of their own and should be given one-half of the number of seats to which they would be entitled on the basis of population. If this is done, the provisions suggested by the Commission that the Governor should have power to certify which candidates are authorized to stand for the depressed class seats will not be necessary. The Government of Bombay are also of the opinion that such separate electorates should be continued for 10 years only, and that the franchise qualification for the depressed classes should be the same as for the other communities.

(3) The proposals for the representation of the Indian Christians and of the Bombay University are accepted. But I am to observe that the Government of Bombay are against multiplicity of communal electorates. I am also to add that while the local Government agree that the present representation of commercial interests should be continued, they are of opinion that such representation should be in its present numbers and not in its present proportion as recommended by the Commission.

(4) The principle underlying the Commission's recommendation regarding representation of Labour contained in paragraph 89 of the Report is accepted. But the Government of Bombay consider that, in view of the fact that Labour would be represented in the general constituencies, the proposed representation should be restricted and that it should, if possible, be provided by election and not by nomination by the Governor. They are of the opinion that agricultural Labour, apart from industrial Labour, should also have special representation. Such representation should be provided by nomination by the Governor as, in view of the difficulties involved in forming suitable electorates for agricultural labourers, that appears to be the only way by which representation can be provided for them, but the question of the enfranchisement of the agricultural labour is one which the Government of Bombay desire to put before the Franchise Committee.

(5) The Government of Bombay are unable to accept the recommendation regarding the special representation of landholders, and adhere to their proposals submitted to the Indian Statutory Commission that, besides continuing the present representation of the landholders, an additional constituency for them should be created for the Southern

Division of the Presidency and one seat allotted to it. The argument that by virtue of standing and influence they have opportunities of being returned in the general constituencies applies to an equal extent to the commercial communities also, which under the Commission's recommendation are to have special electorates provided for them. The Government of Bombay are, therefore, of the opinion that, in view of the importance of the landholders and the steadying influence which they are likely to exercise in the Councils, the privilege of special representation now held by them should be continued, and that as landholders in the Southern Division, owing to the smaller number of electors in it, have, as a rule, very little chance in the election against candidates in the Central Division a separate seat should be allotted to them in the Southern Division as suggested above. One Honourable Minister dissents.

(6) The Commission's recommendations regarding the qualification of women voters call for a detailed examination. It is difficult to estimate without such examination, the statistics for which are not readily available, the number of women voters who will be enfranchised on the proposed qualifications, and what the effect of such enfranchisement would be on the electoral strength of the various communities and interests, especially as social customs will have a bearing on this question. The recommendations are, therefore, accepted, subject to investigation by the Franchise Committee.

(7) In view of the Commission's recommendation that the Anglo-Indians should have representation by election and that the Indian Christians should have it by means of reserved seats, and of their own recommendations that the depressed classes should be provided with representation by election, that the representation of industrial Labour should, if possible, be by election and that the present special representation of the landholders should be continued, the Government of Bombay consider that the Commission's recommendations regarding nomination of members contained in paragraph 92 of the Report are unnecessary, except in the case of agricultural Labour and women the representation of which can be provided for, if the proposal that the Governor should have power to nominate members up to 5 per cent. of the total number of seats only is retained.

(8) The proposals regarding the legislative powers of the Council and the Governor's powers in relation to legislation contained in paragraphs 96 and 97 of the Report appear to be suitable, except as regards the requirement of the previous sanction of the Governor-General to bills introduced in the local legislature. The existing provisions contained in section 80-A (3) of the Government of India Act cause considerable inconvenience in practice even under the present constitution, and will, it is feared, greatly hamper and delay the work of provincial legislatures, which, under the proposed constitutional advance, will extend over a much wider field than at present. It is recognised that, as the provinces have, in theory, the right to range over the whole legislative field, they should be under some restraint in the exercise of this right, so that they may not encroach upon the central sphere. The existing restrictions are, however, too rigid and need to be relaxed, as far as possible, consistently with the due discharge by the Centre of the wider interests committed to their charge. The Government of Bombay think that this can be effected by adding to the existing section 80-A (3) of the Government of India Act a proviso to the following effect :—

“ Provided that nothing hereinbefore contained shall be deemed to prohibit the local legislature of any province from making or taking into consideration without the previous sanction of the Governor-General any law satisfying conditions prescribed in this behalf by Rules under this Act.”

(9) A provision on the lines of existing section 80-C of the Government of India Act should also be made in the new Government of India Bill.

(10) The recommendation that the present distinction between non-voted and voted heads should continue is accepted, subject to the modification that in the explanation contained in the concluding paragraph of section 72-D (3) of the Government of India Act, for the word “ includes ” the word “ means ” and for the word “ allowances ” the expression “ travelling allowances ” should be substituted. The local Government consider it necessary that the definition of the expression “ salaries and pensions ” occurring in this paragraph should not include allowances other than travelling allowances. One

Honourable Member dissents from this view and considers that the concluding paragraph of section 72-D (3) should remain as it is.

7. *Part II, Chapter 3.*—The Government of Bombay agree that the franchise should be extended, so that the electorate will be trebled. It is believed that halving the present qualifications may bring about the desired result; but the matter needs to be fully investigated by an expert committee in the light of statistics. The proposed appointment of the Franchise Committee is, therefore, accepted.

8. *Part II, Chapter 4.*—Owing to the cost involved in having a second chamber and the difficulty of securing a sufficient number of suitable members for it, the Government of Bombay are not in favour of the proposal for a second chamber for this Presidency, provided that the safeguarding powers of the Governor are adequate. One Honourable Member, however, dissents from this view and thinks that a second chamber would form a useful buffer between the Council and the Governor. As regards the proposal to constitute an expert revising body to consider details of legislation, as suggested in paragraph 117 of the Report, the Government of Bombay consider that the present practice, which permits the inclusion of experts in select committees, is adequate and there is no need for an expert revising body such as is suggested by the Commission.

9. *Part III.*—The Government of Bombay have no remarks to offer on the recommendations contained in this part of the Report, as there are no areas in this Presidency notified as backward tracts under section 52-A of the Government of India Act.

10. *Part IV, Chapter I.*—(1) The proposed reconstitution of the Federal Assembly on the basis of the representation of the provinces and other areas according to population will not, it is feared, give a fair representation to the Presidency of Bombay. So far as can be foreseen, by the system of proportional representation, the various communities will enjoy practically the same representation in the Federal Assembly as they have now in the Legislative Assembly. On this point, therefore, the system is acceptable. But the proposal to fix the number of seats to be allotted to each province solely on the basis of population may lead to rather curious anomalies. The population of a province may not really be a fair test of its political or

commercial importance. The proposal is to allocate one seat per million inhabitants. On this basis the Bombay Presidency will get 19 seats, taking the figures of the last census, or possibly one or two more, when the next census figures are announced; whereas Bihar and Orissa with a population of 34 millions will get no less than 34 members and the Punjab where the population is  $20\frac{1}{2}$  millions will get at least 20 members. It may conceivably be contended that the Bombay Presidency is no more advanced politically than these provinces are. But it will, it is believed, be readily admitted that so far as commerce and industry are concerned, Bombay surpasses them. The only reference to the possible effects of the new system of electing members to the Federal Assembly on commercial and industrial interests is to be found in the last sentence of the first sub-paragraph of paragraph 143, Vol. II, of the Report in which the Commission say:—

“ We have also assumed that the members in each provincial Council filling special constituency seats (Commerce and Industry, etc.) will be divided between the different communities in about the same proportions as at present.”

Whether this assumption will turn out to be correct is doubtful. The question, therefore, of proper representation of commercial and industrial interests in this Presidency appears to call for consideration.

(2) Two Honourable Members are in favour of indirect representation; all the other Members of Government favour a system of direct representation.

(3) The Government of Bombay do not agree to the recommendation that the allowances provided for the members of the Federal Assembly representing the provinces, should be a charge on provincial revenue. The Federal Assembly will meet to discuss the legislative and financial business of the Federal Government as distinguished from matters of purely provincial concern. It is, therefore, but fair that the allowances payable to its members should be a charge on central revenues.

(4) The proposal that casual vacancies in the Federal Assembly should be filled by nomination by the Governor is also not accepted. It is likely to be objected to on the ground that it does not assure to the various communities and interests their present proportion of representation.



It is suggested that it should be laid down by rule that the new member elected to fill such a vacancy shall be a representative of the community or interest to which the late member belonged.

(5) The proposals for the constitution of the Council of State are accepted subject to the following suggestions :—

- (a) that the Governor-General should consult the Governor before nominating representatives of this Presidency;
- (b) that the proportion between nominated and elected members should be modified by increasing the elected element; and
- (c) that to ensure that suitable members may be available for the Upper House under the system of indirect election the qualification for membership of the Council of State should be raised. On the Commission's recommendation suggesting the representation of Bombay City on the Council of State by two members representing Commerce, the opinion of the local Government is divided.

11. *Part IV, Chapter 2.*—The Government of Bombay are unable to accept the proposals for the constitution of the Central Government contained in this chapter. The Commission recognise that it is necessary that the Central Government should be a strong one. But it appears very doubtful whether their proposals will really bring about such a result. The last ten years have witnessed the anomaly of an irresponsible executive faced by an elected legislature armed with extensive powers, with the result that, though in theory the irresponsible executive should have been strong, in actual practice its position has been very considerably weakened. The Commission propose to continue exactly the same system with the small changes that the Governor-General in Council shall appoint the members of his Council and the Commander-in-Chief will no longer be a member either of the executive Government or of either of the legislatures. The suggestion is also made that, in future, members of the Executive Council should generally be selected from among the elected members of the legislature. It is not clear how the new executive is to be any stronger than its predecessor. In the new Federal Assembly the Governor-General is to have power

to nominate not more than 12 officials exclusive of the members of his Council who will be *ex-officio* members. In addition, he may nominate two Anglo-Indians if they fail to obtain two seats by election and he has power to nominate 11 members for the backward tracts; that is to say, the official *bloc* will be 18 members *plus* 11 from the backward tracts who will probably support Government. The other nominees from the North-West Frontier Province, Baluchistan, Coorg, Delhi and Ajmer-Merwara will probably not always be on the side of Government. Taking the strength of the Assembly to be 280, it would appear that Government would have a *bloc* amounting to about 10 per cent. of the total strength. The Central Government will, therefore, be in a worse position to pass its measures through the new Federal Assembly than is the present Government in the Legislative Assembly. The Government of Bombay are of opinion that in lieu of the constitution suggested by the Commission, a more appropriate form of constitution for the Central Executive and one which will probably go further to satisfy Indian aspirations may be to have a constitution under which the Army, Foreign Affairs, Indian States and existing External Debt will be put directly under the Viceroy and administered by him, the power to raise new loans resting with the Government of India while all other departments will be transferred to Ministers responsible to the Federal Assembly. The main objection to such a constitution would be the difficulty in arranging for the proper representation of Military and Foreign Affairs in the Legislatures. Without such representation these departments would be likely to suffer, both financially and otherwise. An alternative will be to have a true dyarchical constitution under which the Army, Foreign Affairs and Indian States would be entrusted to Members not responsible to the Assembly, all other subjects being handed over to Ministers responsible to it. It is difficult to say which of the above forms of constitution will be most in accordance with Indian sentiment. It is considered that even among the most advanced sections of Indian politicians it is admitted that, for the present at any rate, the reservation of the Army, Foreign Affairs and the Indian States is unavoidable and that they would be prepared to accept these reservations so long as they obtain the control of the other departments of the Central Government. It may be objected that in the present political turmoil in the country the transfer of the Home-

Department to a Minister responsible to the Assembly would be risky, and similarly that the transfer of the Finance Department would lead to so great a loss of confidence among the investing public as to endanger the financial stability of India. The Government of Bombay, however, consider that any risks that may be involved in the transfer of these departments to responsible Ministers must be faced to put into effect the spirit underlying the Reforms. It has to be remembered also that the Commission themselves have agreed to entrust to responsible Ministers in the provinces the departments of Law and Order and Finance. The Ministers in charge of Law and Order in the provinces will have to face the responsibility of actually dealing effectively with civil disturbances to a far greater extent than the Home Minister at the Centre will have to do. The provincial Finance Ministers will have to administer the provincial revenues, which, in the aggregate, do not fall far short of the central revenues. If such responsibilities are to be entrusted to provincial Ministers responsible to their legislatures it seems an anomaly that the same responsibilities at the Centre should not be entrusted to Ministers responsible to the Central Legislature. I am to add that one Honourable Member dissents from the proposals made above and considers that the recommendations of the Commission regarding the Central Executive should be accepted as they stand.

12. *Part IV, Chapter 4.*—The proposals regarding the Central control over the Provinces in paragraph 182 of the Report are accepted by the Government of Bombay with one dissentient subject to the suggestion that item (2) (matters which may, in the opinion of the Governor-General, essentially affect the interests of any other part of India) and item (6) (safeguarding of Imperial interests) need further definition.

I am to suggest that in the exercise of its control by the Centre care will have to be taken to avoid any action which might antagonize the Provincial Ministry and put it at variance with the Governor. Similarly, there should be no suggestion that a Minister responsible to a Provincial legislature is in any way bound to carry out orders of a responsible Minister at the Centre in his department.

13. *Part V.*—The Government of Bombay are unable to accept the Commission's recommendation that the Army in

India should be wholly under the control of the Imperial Government and that, independently of the forces controlled by the Imperial Government, the Government of India, in co-operation with the Central Legislature, might consider the practicability of organising a purely Indian military and naval force. In the present financial condition of India, the organisation of a purely Indian army, independently of the Imperial forces, is impracticable; and the Commission's recommendation, if carried out, would only have the effect of making the organisation of a Dominion army able to undertake the defence of India, independently of the Imperial army, and the consequent attainment of full Dominion Status an impossibility. The Government of Bombay consider that Indian sentiment would prefer to see a Dominion army built up under the orders of the Commander-in-Chief and that it should remain under his control. It will resent most strongly the suggestion of a superior Imperial army and an inferior Dominion army. The aim, therefore, should be to accelerate the pace of Indianisation in the existing army as far as possible. To fulfil this aim there should be an increased number of military training schools in India and one or more Indian Sandhursts should be established as soon as possible. The field from which candidates for commissioned rank in the army should be taken up should be widened and the age limit for candidates for the schools should be raised. The territorial forces should not be substituted for the regular army, but should remain a part of it and should be developed, as far as finances permit.

14. The Government of Bombay are also unable to agree to the proposals regarding the manner in which the Imperial army is to be utilised for internal security purposes. If the suggestion that the demand for troops for internal security should only be put forward by the express authority of the Governor of the province concerned or, in cases of emergency, by the Minister in the first instance, subject to the demand being endorsed at the earliest possible moment by the Governor, is accepted, it would appear inevitable that where an emergency arises requiring the aid of Imperial troops, there will almost certainly be delay in obtaining them. The Minister would hesitate to take the responsibility of calling for them without first obtaining the Governor's assent; and the unwillingness of the military authorities to take any part in the suppression of civil disturbances,—which is notorious and at the same time

understandable,—would probably lead them to insist on the Governor's orders being obtained before they would supply the troops required. The delay might have very serious consequences for the civil authorities. The further suggestion that as a safeguard against excessive use of the military, financial adjustment should be made between provincial and central revenues, if necessary, by arbitration, would inevitably entail a still further risk of delay in demanding troops in cases of emergency. While fully realising the necessity of troops only being employed in absolutely the last resort, the Government of Bombay fear that if they knew that, in the event of the emergency not proving so serious as they anticipated, the Presidency might be involved in heavy extra expenditure at the instance of the army authorities, who would, in all probability, take the line that the calling in of troops had not been justifiable, both the Governor and the Minister would be tempted to put off calling in military assistance to the last moment, when it might perhaps, in some cases, be too late to be of any use at all. The risk involved in these recommendations appears to call for very careful consideration. The Government of Bombay are of opinion that the present statutory power of the District Magistrate to call out troops for internal security purposes should be retained, as it facilitates prompt action in cases of emergency when delay would often lead to very serious consequences. It is also suggested that in connection with the provision to be made for internal security, the revival of cantonments at large industrial centres like Sholapur, Sukkur, Hubli, etc., should be considered. The Government of Bombay are fully aware that from the point of view of military efficiency such scattered cantonments are not satisfactory, but consider that the reduction in the number of troops and of cantonments which has taken place in the Bombay Presidency since 1900, from the point of view of internal security, has been too drastic. During the period 1900—30 there has been a reduction from 25 to 17 units, *viz.*, a reduction of 32 per cent., while the cantonment stations have been reduced from 20 to 9, *viz.*, by 55 per cent., not counting Belgaum which used to have 4 Infantry Battalions and a battery of Artillery and Jacobabad where one Cavalry Regiment was maintained. Recent experience has proved that in such large centres containing the usual large unruly elements to be found in all big cities the maintenance of law and order, especially at a time when one of the

periodical outbursts of communal or political agitation to which India is always liable is prevailing, would be very greatly facilitated if trained troops were available on the spot to deal at once with any local riots which may occur, and the location of such troops would prevent a great deal of the loss and suffering which are apt to occur when they are not so available. From the point of view of internal security, the moral effect of the permanent presence of troops in such large centres is of the greatest importance.

15. *Part VIII.*—Regarding Chapters 1-3, which are in the main historical and descriptive, the Government of Bombay have no comment to make except the general one that since Sir Walter Layton wrote his report the financial position of this presidency has altered definitely for the worse. In particular, the concentrated attack which has been made on the excise revenue seems likely in the current year to reduce the expectations of revenue from this source by some 70 lakhs; and whatever may be the political situation in the next and following years, it seems certain that this revenue will not be recovered in full.

16. In Chapter 4 the report discusses the possibility of various new taxes and the methods of administering them. Subject to the remarks which follow the Government of Bombay accept in general the conclusions drawn in this chapter.

(1) *Tax on agricultural income.*—The Government of Bombay, by a majority, are in favour of abolishing the total exemption of agricultural incomes, and accept the view of Sir Walter Layton that the exemption should gradually be removed. The minority would retain the exemption or would modify it only to the extent of including agricultural income for the purpose of determining whether an income is taxable or not. It is difficult to form any reliable estimate of the revenue from this source. An estimate which has been prepared puts it roughly at 25 lakhs.

(2) *Death Duties.*—The Government of Bombay reaffirm the opinion they gave to the Royal Commission in favour of the early introduction of these duties.

(3) *Excise Duties.*—The Government of Bombay accept the proposal to introduce excises on matches and tobacco. The difficulty in regard to both these taxes hitherto has been in the method of collecting them provincially. The system of central collection now proposed by the Statutory

Commission undoubtedly simplifies the problem. It is unnecessary in this report to enter into details, in regard to which separate communications have already been made to the Government of India. In regard to matches the Government of Bombay desire only to lay stress upon two points. Firstly, they agree with the recommendation of the Tariff Board that the duty in the first instance should be moderate, and they have recommended, therefore, that it should not exceed Rs. 1-8 per gross of boxes. It should be possible with this rate to assure that the whole of the increase (approximately) shall be absorbed into the Exchequer. Secondly, they support the view of the Tariff Board that if an excise duty is levied it should be "accompanied by a corresponding increase in the import duty, so as not to trench upon the degree of protection afforded to the industry".

In regard to tobacco, the Government of Bombay accept the proposal to put an excise duty on factory-produced tobacco. They consider that it should be accompanied by a tax on the retail sale effected by the issue of licenses to sell tobacco in all towns and large villages. The taxation of the manufacture of bidis, which appears theoretically just if an inequitable burden is not to be put upon the manufacture of cigarettes and cigars, presents considerable difficulty, owing to the fact that at present in this presidency at any rate, the manufacture is very largely a cottage industry. If the maximum revenue, therefore, is to be obtained from the taxation of tobacco, the Government of Bombay are inclined to favour the system already introduced into several States, of a license to cultivate.

(4) *Terminal Tax*.—The Government of Bombay are of opinion that the proposal does less than justice to the theoretical objections to this tax. They hold, moreover, that the Report has failed to give due consideration to the fact that at present the terminal tax is one of the taxes allotted to local bodies. In this Presidency no less than 31 municipalities have already imposed a terminal tax, and the difficulties which the local Government will encounter in its dealings with local bodies and with the States appear to have been overlooked. It seems likely, in view of the needs and attitude of the local bodies, that even if the Provincial Government undertook to collect the general tax it could hardly escape handing over the proceeds to all the local bodies affected, including those to whom permission to introduce the tax had hitherto been refused. Such

benefit, therefore, as the local Government would stand to gain from its general introduction would be only indirect; and the Government of Bombay are not prepared to support the proposal.

(5) *Local cess on land*.—The view expressed in paragraph 275 of the Report is accepted. Local Boards have already been given authority to raise the rate of the cess for the purpose of assisting to finance primary education.

17. *Chapter 5*.—The Government of Bombay, subject to the remarks which follow, accept the general principles laid down in this chapter relating to the distribution of revenues. The only controversial one from the point of view of Bombay is the proposal to distribute the centrally collected taxes on the basis of population. This is a principle which the people of the Bombay Presidency have always resisted for the obvious reason that while their population is only some 8 per cent. of the whole population of British India, their percentage of expenditure is about double this. On the other hand, it is recognised that the *per capita* basis of distribution is the simplest automatic test which can at the same time command public confidence and suitably benefit the backward provinces. Used then as a "corrective" to adjust inequalities between provinces, and restricted to a suitable proportion of the centrally collected revenues, the principle enunciated in paragraph 284 could be accepted. It is in the application of the principle, therefore, that we must look for its equity. If the principle be extended to the whole fund of the centrally collected taxes, the benefit to other provinces, more densely populated, but whose financial needs are far less pressing than those of Bombay, is out of all equitable proportion. In view of these comparative results, the Government of Bombay hold that it is clear that some other basis of distribution is called for which will take into consideration the financial needs of a province as well as its population. Since needs can only be determined by obligatory expenditure on essential services, it is possible that agreement on this question can only be attained after expert enquiry into the conditions of the various Provinces. If this is so, the Government of Bombay would welcome such an enquiry. It is certain that with the fall in the Excise Revenue, a fall which is no longer a threat of the future, but which has already occurred, the Government of Bombay can no longer hope to carry on with the revenues remaining at their disposal. They are, therefore, compelled to apply for



a preliminary adjustment which can meet their outstanding needs, before the application of the automatic principle.

18. *Chapter 6.—Application of the principles and allocation of existing revenues.*—Taking the recommendations in the order in which they come, the Government of Bombay have already accepted in theory, for the practical convenience of the administration, the re-arrangement which sets off an excise duty on foreign liquor against the surrender of certain non-judicial stamps. But in the calculation of the financial results of this arrangement they are unable to accept without modification the view of the Report that these two items will cancel one another. The revenue from stamps ought in the ordinary course of business to go up, while there is more than a possibility that the receipts from an excise on foreign liquor will go down.

19. *The Income-tax.*—Though the Government of Bombay are still of the opinion that a more equitable distribution would be of the total income-tax collected in the province and are not convinced that the difficulties of this solution are insuperable, still they do not desire to press this view, provided that an equitable solution can be found for the distribution of the centrally collected taxes. On this understanding they accept the proposal contained in paragraph 293.

20. In regard to the proposed schedule for the transfer of revenues it seems likely that the conditions which have supervened since Sir Walter Layton drafted his proposal have made his estimates so hypothetical that it may be impossible for the Government of India to agree to the proposed time-table. However that may be, the Government of Bombay desire to press on the Government of India that it is essential that a schedule of some kind should be prepared in order to avoid any danger of caprice in the allocation of revenues. While it may be admitted that the times and amounts for transfer, which are subject to the condition that a surplus is available, must depend upon the judgment of the Central Government, at any rate the order of the revenues for transfer can be determined by schedule, and the transfer can be made a first charge on any recurring surplus, with the additional condition that delay extending beyond a specified period shall be made good to the extent possible in subsequent years.

21. Coming to the new Provincial Taxes, the views of the Government of Bombay on the Agricultural Income-tax.

and Terminal Taxes have already been given. The Government of Bombay accept the proposal that the Provinces should be permitted to levy a surcharge on the income-tax.

22. *The Provincial Fund.*—The Government of Bombay have in a former paragraph implicitly signified their acceptance of this proposal, but have qualified their agreement to the distribution on a *per capita* basis by the proviso that the distribution of so large a proportion of the total revenues of the country on this basis does in fact lead to inequity, and should, therefore, be modified by the introduction of some other basis.

23. *Chapter 7.*—The Government of Bombay have no comments to make on the proposed constitutional machinery. It seems to follow naturally from the general recommendations of a federal scheme of Government. They only desire to point out that the desirability of dispensing with annual Finance Bills when there are no changes in the taxation suggested, referred to in Chapter 1, Part IV (paragraph 160) of the Report, applies with even greater force to the proposed Provincial Fund. They recommend that the legislation imposing the excise duties should not be voted every year but only when the Inter-provincial Finance Council has decided to make proposals for changes, which make it necessary to do so.

24. In regard to the separation of Provincial Balances, the statement in paragraph 310 is not in accordance with the views on provincial autonomy hitherto generally accepted by Provincial Governments and referred to by the Reforms Enquiry Committee in 1924. But the Government of Bombay do not wish to press for the immediate separation of balances, and agree that the question should be left open, so that any Provincial Government which desires to do so could be permitted hereafter to maintain separate balances subject to suitable arrangements being made as to detail. They assume that the Government of India would take steps in the meantime to carry out the suggestion made in the Report that no undue profit shall be made out of the business for the benefit of the Central Government.

25. The proposal for the complete separation of Accounts from Audit is in accordance with the views of the Government of Bombay already given to the Government of India.

26. The Government of Bombay welcome the proposal to set up a Provincial Loan Council, and recognise that its functions must in the first instance remain advisory.

27. *Part IX.—The Future of the Services.*—(1) As regards the retention of All-India recruitment by the Secretary of State for the "Security Services", and possibly for the Irrigation and Forest Departments, the Commission have differed from the recommendations of the Lee Commission who came to the conclusion that when a department is transferred All-India recruitment by the Secretary of State in it should cease. If the Statutory Commission's recommendations for the Provincial Governments are approved, all the departments will be transferred to the control of Ministers. The retention of All-India recruitment by the Secretary of State for these departments will entail the anomaly of the servants of a Government responsible to the legislature being appointed by an authority outside India, especially in the case of Indians. The Government of Bombay by a majority, therefore, adhere to the recommendation which they made to the Indian Statutory Commission that, in future, recruitment for the All-India Services should be carried on by the Central Public Service Commission. They consider that a European element is still required in these services and that if recruitment is carried on by the Central Public Service Commission, officers of the required standard will be obtained provided there is a guarantee of continuity of service and of reasonable protection by the Governor-General in Council. They consider that the emoluments of the officers recruited by the Public Service Commission should be votable. The minority is of opinion that recruitment by the Public Service Commission will not result in candidates of the required attainments and qualifications being obtained and is in favour of retention of recruitment by the Secretary of State. A suggestion was made for the consideration of the Government of India that recruitment by the Secretary of State for All-India Services should be continued for 10 years at the expiry of which the question should be reconsidered.

(2) As regards the Commission's recommendation that the Secretary of State should continue to have the power to prescribe the number and conditions of appointment of I.M.S. Officers to be employed in the provinces, the majority of the Government of Bombay feel that the principle adumbrated for the other Services should be adhered to in the case of the I. M. S. also. They realise, however, that in the case of the I. M. S. there are implications in connection with the Army which may make it difficult to do this.

(3) In regard to the recommendation that the rates of Indianisation laid down by the Lee Commission for "Security Services" should be maintained the local Government is divided. One Member and one Minister are in favour of the examination at Allahabad and London being held by the Indian Public Service Commission, the results merged and the best men selected. Another Member suggested that if these examinations are to be held in London and Allahabad the number of candidates to be chosen by examination each year should be fixed after deduction of nominations required to secure communal representation in the Services and should be divided in the ratio of 50 : 50 between London and Allahabad. Another suggestion made is that the rate of Indianisation suggested by the Lee Commission should be reduced to 33 Europeans to 67 Indians by 1939 for the Indian Civil Service, and 1949 for the Indian Police Service. The remaining Members favour the retention of the rates of Indianisation suggested by the Lee Commission as far as possible.

(4) The recommendation that as regards the existing members of any All-India Services for which no further recruitment will be made they should, following the recommendation of the Lee Commission, retain all the rights of the All-India Services is accepted. The Government of Bombay also accept the recommendation that the privilege of premature retirement should be extended without limit of time to any officer who might, under the present rules, have so retired upon the coming into force of the new constitution, and that the existing safeguards provided in the Government of India Act and the statutory rules made thereunder to secure the position of the Services should continue as at present.

(5) The Government of Bombay agree that officers' pensions and the Provident and Family Pension Funds should be safeguarded.

(6) If the recommendation of the local Government as regards recruitment by the Public Service Commission is accepted, the Commission's recommendation that as regards future recruits to All-India Services the Secretary of State for India should be under an obligation, if need arise, to see that such officers are treated in the spirit of the recommendation of the Joint Select Committee in regard to the Services and that he should have power to take the necessary measures automatically disappears.

(7) The recommendation that additional pensions should be given to Governors of Provinces who belong to the Services is accepted. While recognising that the appointment of Governors from the I. C. S. is a reward which may enhance the attractions of the Service from a recruitment point of view, the majority of Government are of opinion that Governors should not be appointed from the Services.

The recommendation that some increment to the pension of a Member of the Civil Service who, being selected by a Governor to be a Member of his Cabinet, has to retire earlier than he would have done if he had not been so appointed be granted is not accepted, as the Government of Bombay do not agree to the recommendation that the Governor should have power to appoint an official as a Cabinet Minister.

(8) The Government of Bombay accept all the recommendations made by the Commission with regard to the Public Service Commissions.

28. *Part X.—High Courts.*—On principle, and still more on administrative grounds, the Commission's proposal to centralise the High Courts cannot be accepted. When recommending the centralisation of the High Courts, the Commission appear to have failed to realise that, besides the Judges of the High Court, the judicial organisation in the provinces comprises the district judges, subordinate judges, magistrates and other judicial officers. Before appointments to the district and subordinate courts are made, the High Court is invariably consulted by the local Government; and it is essential that the existing relations between them should be maintained. As stated by the High Court in their Memorandum\* to the Indian Statutory Commission, the appointments, transfers and leave of all those officials must necessarily involve a local knowledge and heavy correspondence which is not of sufficient importance to justify the expense and delay which would be caused by its transfer to Delhi and Simla. The relations between the Bombay High Court, the Court of the Judicial Commissioner of Sind, and the local Government have been cordial and the Government of Bombay do not think that any case has been made out for a change in the existing arrangement.

29. *Part XI.*—(1) The recommendations contained in this Part are based on the principle that the ultimate

responsibility for the welfare and government of the people of India shall continue to rest with Parliament and that the largest possible measure of responsibility shall be transferred to the Provinces, and such relaxation of control shall take place at the Centre, as is compatible with the due discharge of its responsibilities by Parliament. The Secretary of State for India will continue as the agent of Parliament in all matters relating to the affairs of India, and it is, therefore, necessary that he should have the powers proposed to be conferred on him to enable him to discharge his duties under the Constitution. But the Council of India which is attached to him as an advisory body stands on a different footing. Though in theory intended to keep the Secretary of State informed of the existing conditions in India and to advise him on questions relating to the affairs of India of which it is intended to have knowledge and experience, it is unable, by virtue of its constitution, fully to fulfil the object for which it was constituted. It is liable to be out of touch with existing conditions. Its members are appointed for a term of years and seldom live in India after their appointment. The *pros* and *cons* of each problem are so thoroughly examined in India that it does not seem necessary to have a separate advisory body in London. Indian opinion entitled to consideration is against its continuance. The Government of Bombay are of the opinion that, in pursuance of the goal towards which India is advancing, it is advisable to transfer powers, as far as possible, from the India Office to the Government of India. The Secretary of State might have expert advisers on the remaining minimum number of subjects—the Services, Finance and the Army. Differences on questions of high policy between the Imperial Government and the Government of India should be settled by negotiation as suggested in paragraph 359 of the Report. Two Honourable Members are in favour of the retention of an India Council reduced in size and with limited duties.

(2) With regard to the view taken by the Commission on the "Fiscal convention", the Government of Bombay suggest that in view of the Commission's definition of the principle of delegation of powers by the Secretary of State to the Government of India, the subjects on which the principle underlying the fiscal convention cannot be allowed should be categorically stated and should not travel beyond the Secretary of State's sphere of control.

(3) The proposals regarding the functions of the High Commissioner contained in paragraph 361 of the Report are accepted.

30. As regards paragraph 5 of Mr. Lewis' letter in which he asks for an estimate of the reception which the recommendations of the Commission have received in the Presidency, I am to state that this reception has been almost uniformly adverse. In quarters where the proposals have not been summarily rejected as unsatisfactory, they have been described as disappointing, retrograde, and reactionary. Even moderate opinion seems to have been gravely disappointed with them. The extremists will, of course, have nothing to do with the Report and have expressed no opinions save those of the bitterest enmity. They condemn it as nothing less than an insult to India and an instrument to perpetuate foreign domination over the country.

The Liberals, Responsivists and the Indian Mercantile Community have been only a degree less severe in their condemnation of the recommendations. They recognise that there are good features therein, but say that these are largely matters of detail and that in essentials such as the constitution of the Central Government, Indian control of defence and the Army, control of finance and fiscal policy, the responsibility of the Central Government to the Central Legislature, freedom from interference of the Secretary of State and control over the Services, the Report suggests no advance. The recognition of the unity of British India and the Indian States and the need for a federal system of Government embracing both has met with some approval.

What may be termed public orthodox Muhammadan opinion is a little more favourable, but goes little beyond the point where the recommendations appear to aid the Muhammadans in their desire to avoid Hindu ascendancy. Similarly the non-Brahman party publicly express disappointment with the proposals. On the whole, it appears that no section of Indian opinion in this Presidency regards the Commission's Report as much more than an item for discussion at the Round Table Conference.

31. The Press holds much the same views as those given above. Practically all vernacular papers, barring a few unimportant and uninfluential ones, have severely condemned the recommendations as inadequate, out of date and

even retrograde. Of the English papers while the "Indian Daily Mail" and the "Bombay Chronicle" have condemned it as inadequate and an affront to India, the "Times of India" has taken a moderate view. In its opinion while the proposals for provincial self-government are more generous than most people expected, those for the constitution of the Central Government are, on the other hand, bound to be widely condemned. It adds that the proposals for the constitution of the Central Government need to be revised and such revision should appropriately be discussed at the Round Table Conference.

---

No. 1601, dated Bombay, the 3rd July 1930.

From—K. C. SEN, Esq., I.C.S., Registrar, His Majesty's High Court of Judicature, Bombay, Appellate Side,

To—The Secretary to the Government of Bombay, Home Department, Bombay.

With reference to your letter No. 7565/2, dated the 28th June 1930, on the subject noted above, I am directed by the Honourable the Chief Justice and Judges to say that in view of the uncertainty that seems to exist at present as to what form the future constitution of India is likely to take and what the relations between the Central and local Governments are likely to be under that constitution, Their Lordships think that they cannot usefully offer any opinion on the subject at the present moment or add anything to the views they have already expressed in their printed Memorandum submitted to the Indian Statutory Commission, 1928, a copy of which is appended hereto.

*Memorandum submitted by the Chief Justice and Judges of the High Court of Bombay to the Indian Statutory Commission, 1928, through the Government of Bombay.*

1. In submitting this Memorandum to the Indian Statutory Commission through the Government of Bombay, the Chief Justice and Judges of the High Court of Bombay desire in the first place to explain their position. It is not the practice of this High Court to tender advice to Government unless requested so to do, or unless the matter is one coming under the direct cognizance of the High Court, and is of such a nature that the attention of Government may be usefully drawn to it. Hitherto no official request has



been sent to the High Court either by Government or the Indian Statutory Commission to tender advice on any subject coming within the scope of the Commission, nor have any papers on the subject been officially circulated to the High Court. As regards the bulk of the work of the Commission this is clearly understandable, for presumably it will be mainly political in the modern sense of that word, and as regards such matters the High Court is in no way concerned. On the contrary its settled practice is to keep strictly aloof therefrom.

2. It would however appear from a Memorandum published in March 1928 in the public press and elsewhere that the Commission has invited statements both from official and non-official sources, from representative associations, local bodies and responsible individuals on any of the subjects falling within the limits of the enquiry to be undertaken by the Commission, and that amongst such subjects are included as item No. 7 "The Courts and the Judiciary". Further quite recently there has been published in the public press a Memorandum submitted to the Commission by the Associated Chambers of Commerce of India and Ceylon, in the course of which they propose that all High Courts in India should be under the Government of India both for administration and finance. They further suggest that a Supreme Court may become necessary. These proposals are important in themselves, and come from a body of great importance; and they directly affect this High Court and the Presidency at large. If then the Commission is prepared to consider these proposals as falling within the limits of their enquiry, it would seem desirable that some opportunity should be given to this High Court of expressing its views on the subject. Before doing so however this High Court would have preferred to have had the advantage of a discussion on the subject with representatives of the Government of Bombay, but as time presses owing to the Commission visiting the Presidency of Bombay first, it has been thought desirable that the High Court should make the following preliminary statement, confined in the first instance to the proposals made by the Associated Chambers of Commerce, and should ask for liberty to supplement it at a later stage if necessary.

3. At the outset then it may be found convenient to state briefly the history and the present jurisdiction and

position of this High Court. It represents an amalgamation effected in 1862 of (a) the Supreme Court of Bombay founded by the King's Charter of 1823 and inheriting earlier jurisdiction acquired at various times since the cession of Bombay to the Crown in 1661, and (b) the Courts founded by the East India Company in the up-country or mofussil districts of the Presidency. The former (a) represented the King's Courts and was granted by the Charter of 1823, speaking generally, the jurisdiction of the Courts in England so far as regards the town and island of Bombay. The latter (b) took their jurisdiction from legislative authority conferred upon the East India Company. The main area then of this High Court's jurisdiction still divides itself into two natural branches, *viz.*, (i) the town and island of Bombay which may be called Bombay and (ii) the up-country or mofussil districts. As regards (i) the Court is concerned with a great commercial city ranking third or fourth in population amongst all the cities of the British Empire. And here the Court has to deal with suits from start to finish, for they all originate in Bombay and are tried there. Hence this main branch of the Court is called "the Original Side". As regards (ii) the Court is concerned with the problems of large agricultural areas, for the up-country districts apart from large towns like Poona and Ahmedabad are mainly devoted to agriculture. And here the Court has to deal with suits on appeal, for they originate and are tried in the mofussil. Hence this other main branch of the High Court is called "the Appellate Side". Accordingly, the main feature of litigation in Bombay is originating or appellate mercantile and commercial litigation, particularly relating to the sale of goods. The main feature of litigation from the up-country or mofussil districts is appellate litigation concerning land.

4. As regards the general nature of this jurisdiction, it is of a most extensive and varied character. It includes every variety of civil suit from mortgages down to divorce, apart from revenue matters, and even there this High Court is given by statute a special jurisdiction as regards for instance income-tax and super-tax. It also includes all criminal jurisdiction. This civil and criminal jurisdiction is exercised over some 16 millions of people living in an area of some 77,700 square miles in the Presidency proper, excluding Sind. This High Court has also special jurisdiction over certain cases coming from the Persian

Gulf, Aden and Zanzibar and it is proposed by the Home Government (contrary to the wishes of this High Court) to extend it to Abyssinia.

5. With this large population, the litigation naturally runs into large figures, as will be seen from the Report on the Administration of Civil and Criminal Justice in the Bombay Presidency for the year 1926. Taking first the Original Side (which is the largest Original Side of any High Court in India) it will be seen from page 82 that during that year 3,621 suits were disposed of in addition to 21 Testamentary suits and 1,168 Insolvency matters making a total of 4,818. It also disposed of 88 appeals from its original jurisdiction. As regards Criminal Sessions 105 cases were disposed of, all of which were tried with juries. Turning next to the Appellate Side, 1,193 civil appeals in all were disposed of, in addition to 1,361 miscellaneous civil matters (see page 85). As regards criminal work, 642 appeals and 390 references were disposed of, in addition to 161 miscellaneous applications. The aggregate total then for the year on both Original and Appellate Sides, civil and criminal, amounts to some 5,670 suits, cases and appeals, and 3,090 Insolvency and other miscellaneous matters.

6. Turning next to the Mofussil Courts, it will be seen from page 80 of this Report that during the year 1926 they disposed of 128,515 civil suits and 4,604 civil appeals. In addition 708 criminal cases and 1,710 criminal appeals were disposed of by the Sessions Courts. The above is apart from the Small Causes Court, Bombay, which disposed of 35,137 civil suits. It is also irrespective of a very large number of criminal matters tried by the Magistrates in Bombay and in the mofussil. From page 38 it would appear that about 266,237 persons were put on trial, other than in the Courts of Session or Superior Courts.

7. The judicial staff to dispose of this litigation will be found at pages 1 and 17 of the Report. It consists as far as the High Court is concerned of 8 permanent Judges (including the Chief Justice) and 1 or 2 temporary additional Judges. As this staff is unable to cope with the voluminous civil and criminal work on both the Original and Appellate Sides without there being regrettable arrears, an increase to 11 permanent Judges has been asked for. This request is still under the consideration of Government. As regards the mofussil, the staff is

divided up into some 17 different Districts, at the head of each of which there is a District Judge. Under the District Judges there are for civil work some 22 first class and 104 second class Subordinate Judges in addition to 2 Joint-Judges, 7 Assistant Judges and 2 Small Cause Court Judges. This is exclusive of the Bombay Small Causes Court which has 6 Judges. As regards the criminal work each District Judge is also Sessions Judge, and usually the above Joint and Assistant Judges are given the powers of additional Sessions Judges. Apart from these officers, there is a large number of magistrates, most of whom are not engaged exclusively in judicial work, but have executive duties to perform as well such as revenue or police work. The Report at page 17 shows that there were some 974 first, second and third class Magistrates, 467 Honorary Magistrates and 19,741 Police Village Patels for the year in question. Under section 107 of the Government of India Act the High Court is given the superintendence over all Courts subject to its appellate Jurisdiction, and may make general rules for regulating the practice and proceedings of such Courts, subject to the previous approval of the Government of Bombay.

8. The income brought in from this litigation also runs to large figures. As regards the Original Side the receipts for 1926 were Rs. 10,16,740 and the expenditure Rs. 7,02,345 leaving a net surplus of Rs. 3,14,395 (see pages 5 and 6 of the Report). This is irrespective of Rs. 10,87,212 collected by the High Court for Probate Duty, and if 10 per cent. is allowed for the cost of collection, this surplus would be increased to Rs. 4,23,116. On the Appellate Side however the receipts of Rs. 1,83,987 were less than the expenditure of Rs. 3,92,270 by Rs. 2,10,029. But if this deficit of Rs. 2,10,029 be deducted from the above net surplus of Rs. 4,23,116 on the Original Side, a final surplus profit is shown of Rs. 2,05,087. The above expenditure includes the salaries of the High Court Judges. In effect these figures show that the civil litigant on the Original Side pays for the costs of all the Original Side civil and criminal litigation and also for the deficit on the Appellate Side caused by the appellate civil and criminal work from the mofussil.

9. As regards the financial figures for all the Courts of the Presidency, both civil and criminal, the surplus of receipts over expenditure for the year 1926 was

Rs. 30,57,574 according to the official return of the Accountant-General. This expenditure included expenditure over new buildings amounting to Rs. 9,00,000 and also repairs to buildings to the extent of Rs. 87,203. Speaking generally then it would appear that the Courts whether in Bombay or the mofussil bring in a substantial net revenue to Government, after paying all expenses including salaries and expenditure on buildings, and the cost of criminal work; and that it is the civil litigant who mainly produces this satisfactory financial result. This has to be borne in mind in considering any question of the transfer of the High Court to the Government of India for administrative or financial purposes.

10. The permanent High Court Judges are appointed by His Majesty and hold office during His Majesty's pleasure [sections 101 (2) and 102 (1), Government of India Act, 1915]. In practice in recent years they undertake on appointment to retire at 60, though there is no provision to this effect in the Act. This age-limit is not always to the advantage of the High Court, and might be reconsidered. Temporary additional Judges for periods not exceeding two years are appointed by the Governor-General in Council [section 101 (2) (i)] and acting Judges to fill temporary vacancies by the Government of Bombay (section 105). The salaries, furloughs and pensions of the High Court Judges are regulated by special statutory rules made by the Secretary of State which will be found in the India Office List, 1928, page 388. The grant of furlough rests usually with the Government of Bombay.

11. The office staff of the High Court is appointed by the Chief Justice under clause 8 of the Letters Patent of 1865, and they are paid such reasonable salaries as he appoints and as the Governor of Bombay in Council subject to the control of the Governor-General in Council shall approve of. The aggregate office staff numbers about 212, including the Insolvency Department which accounts for 33 and the Translation Department which accounts for 55 members. They are under the general control of the Chief Justice.

12. The work of the High Court falls into two natural divisions, *viz.*, (a) its judicial work and (b) its administrative work. As regards (a) the sittings in open Court are substantially the same as in the High Court in England, *viz.*, 5 hours per day for 5 days per week. The Bombay

Vacations (including the Christmas and Easter holidays) are less, *viz.*,  $12\frac{1}{2}$  weeks against  $16\frac{1}{2}$  weeks in England, but in Bombay the Courts are closed on certain Government public holidays numbering about 18 days in all, and therefore the aggregate Bombay vacations and holidays amount to about 15 weeks against the English High Court's  $16\frac{1}{2}$  weeks. The sittings of the High Court are held solely in Bombay, and it does not move with Government to Mahableshwar and Poona. Nor does it go on circuit. In this latter respect there is no recent instance of the exercise of the powers given by clause 31 of the Letters Patent. But inspection tours of the various District Courts lasting some 4 or 5 months are or ought to be made every 2 or 3 years by a High Court Judge, and proper financial provisions ought to be made for these tours by the local Government. At present there is difficulty in obtaining financial sanction to them, and the same observation applies to short tours or visits by the Chief Justice.

13. As regards (b) the administrative work is heavy and increasing in burden. It primarily falls on the Chief Justice and on the administrative Judge, Appellate Side, and the Administrative Judge, Original Side, respectively, but many of the more important questions are laid before the Judges as a whole, and occupy a great deal of their time. This administrative work is largely effected by correspondence with Government, and includes advice on the appointments, postings and promotions of the mofussil Judges; the variations of the Courts in accordance with local needs; the finances of the High Court including salaries and other expenditure; pending or suggested legislation; the framing and amendment of rules and procedure; the admission of advocates, attorneys and vakils after examination, and the investigation of complaints. As regards legislation, it had become the practice of the Government of India and the Government of Bombay to ask the opinion of the High Court on an increasing number of Bills or Resolutions, many of which did not affect the High Court or the Courts subordinate to it. But as the result of representations made by certain High Courts, including the Bombay High Court, it is anticipated that this branch of their work will decrease. As an instance of their administrative work it may be mentioned that in the course of the last two years the Chief Justice and Judges have held an enquiry into the reorganization of the whole of the depart-

ments and staff of the High Court, the papers on which alone have run into some 800 large printed pages. There has also been an enquiry into the judicial and office staff of the several 17 District Courts and the Courts subordinate to them. The proposals of the High Court as the result of these enquiries are now before the Government of Bombay.

14. It may here be observed that even as regards any matters which may ultimately go before the Secretary of State or the Government of India, the practice is for the High Court to send them in the first instance to the Government of Bombay. This would seem clearly a convenient practice under existing conditions, for then the local Government knows of the proposals of its own High Court and can also express its own views in forwarding the papers to the Government of India. As regards appointments to the High Court, the Chief Justice is usually consulted personally on these and some other appointments. As regards appointments to the District and Subordinate Courts, the practice is for the Chief Justice and Judges to be consulted by Government.

15. To complete this sketch of the present position and work of this High Court, the Chief Justice and Judges would like to say that the tradition of this High Court has been to maintain friendly relations with its own Government without in any way jeopardizing that independence which it is essential for any efficient High Court to maintain. The personal equation may at times lead to minor variations in this respect. But the Indian Statutory Commission may take it that this High Court highly appreciates the consideration and courtesy with which it has been treated by the Government of Bombay over a long series of years in the discussion of a large number of complicated and difficult subjects.

16. Turning next to the specific proposals of the Associated Chambers of Commerce, the onus of proof would seem to lie on those who advocate the change that in future this High Court should be under the Government of India both for administration and finance. It is not altogether clear whether the proposal is intended to include the District Courts as well as the High Court itself. If, however, the proposal does extend to the District Courts, then this High Court cannot support it. The figures for the Districts given in paragraph 7 show that at present the Government of Bombay is concerned with some 160 Civil

Judges and 974 Criminal Magistrates in addition to 467 Honorary Magistrates. The appointments, transfers and leave of all these officials must necessarily involve a local knowledge and a heavy correspondence which is not of sufficient importance to justify the expense and delay caused by its transference to Delhi and Simla, and the heavy increase in that correspondence which would be caused by the Central Government having necessarily to consult the local Government in a large proportion of matters. Further, as regards the 974 Magistrates who perform both judicial and executive functions, the whole system would presumably have to be recast, as otherwise the Magistrates would be part-time officials under the Government of India and part-time officials under the Government of Bombay. It is recognized that if henceforth the High Court was to be under the Government of India, and the mofussil Courts under the Government of Bombay, there might be some risk of friction between the local Government and the High Court, but it would have to be left to the good sense of those in authority to prevent this. It is also recognized that this division would render it necessary to make some adjustment as between the Government of India and the Government of Bombay of the revenue derived from the High Court and the mofussil Courts respectively. But the latter is a financial detail.

17. Confining then the proposal to the High Court itself, but retaining the High Court's existing powers of superintendence over the District and other subordinate Courts under section 107 of the Government of India Act, the main points for consideration in favour of the proposal would appear to be as follows. First, that the centralization of the High Courts under the Government of India would tend to the unity of the Indian Empire and the greater security of the High Courts themselves. Secondly, that a central authority would tend to improve and co-ordinate the general administration of all the High Courts by adopting the good and discarding the bad methods that may now be found in individual Courts. Thirdly, that appointments would not be subject to the same political or communal pressure. Fourthly, that the High Courts would be removed from the risk of attacks in the Local Legislature, and as regards the Central Legislature, the Government of India would probably be strong enough to prevent unfair criticism. Fifthly, that the effective work of the High Courts would no longer depend on the fluctuat-



ing finances of its local Government or on the chances of some hostile vote on the annual Budget, or on the hostility or opposition of some extremist local Government of the future.

18. As regards the first and second points, the High Courts of India number at present seven. The four senior Courts are those of Calcutta, Madras, Bombay and Allahabad. The three High Courts of Patna, Lahore and Burma have been formed within the last 12 years or so. The total number of permanent and temporary additional Judges in these 7 High Courts would appear to be about 83 according to the India Office List, 1928. In addition there are several Chief Courts or Judicial Commissioner's Courts which for certain purposes have the powers of a High Court. It is not proposed to refer to them any further, except to say that as regards the Court of the Judicial Commissioner of Sind, the Act (Bombay Act No. VII of 1926) which was passed to convert it into a Chief Court with increased status and powers has not yet been carried into effect owing, it is believed, to the financial condition of the Government of Bombay. Nor is it proposed to deal specifically with any of the other High Courts except to say that the High Court of Calcutta has long been under the Government of India, and that therefore their Judges are in a position to state the advantages and disadvantages they have thereby experienced. The distances between the Provinces are so great and the existing opportunities of meeting Judges from another Province are so slender that these factors added to the diversity in the needs and procedure of the various Provinces make it impracticable for the Judges of this High Court usefully to make any specific suggestions as to the work or needs of any other High Court. No doubt this to some degree bears out the suggested need for a central authority. The Privy Council, for instance, has been a strong link in connecting up the various parts of the British Empire from a judicial point of view. And in time the Government of India might be able to effect a similar result within the Indian Empire from an administrative point of view. But against this has to be weighed the practical difficulty of a central authority acquiring sufficient personal knowledge of the needs of the various High Courts spread as they are over a vast area of approximately the size of Europe (apart from Russia) and containing an aggregate population of over 300 millions.

19. In this latter connection it may be observed that ordinarily under the above proposal the High Courts would come under the Home Department of the Government of India. But that is already an over-worked Department, and the member in charge who usually acts as Prime Minister and Leader of the House will normally be more interested in politics and activities of general administration than in the judiciary and Courts. This, however, would to some extent be mitigated if all the High Courts were placed under the Law Member, though as regards the question of finance, the main voice would be that of the Finance Member. This would also have the advantage of the affairs of the High Courts being dealt with by a practising lawyer, for the Law Member is usually chosen from the Bar. In that event it would no doubt be open to the Law Member to make suggestions to the various High Courts which would tend to uniformity so far as is practicable and desirable. The work, for instance, both of the Chamier Committee and the Rankin Committee were starting in the differences they disclosed in the practical working of the various High Courts. But the work of those Committees requires to be followed up, for all those differences can hardly be said to be essential.

20. One fear that has been expressed is that this change might lead to Judges being transferred from one High Court to another. This, however, would meet with strong opposition not only from the Judges themselves, but also in all probability from the Bar. At present no High Court Judge would be transferred without his consent, and there would seem no reason why this desirable practice should be altered under the above proposal. The Judges would still as before be appointed by His Majesty the King, and accordingly their appointments would still be made through the Secretary of State.

21. Another fear that has been expressed is that the above proposal would involve the Bombay Judges losing certain privileges which they at present enjoy owing to the exigencies of local conditions, *e.g.*, their existing occupation of Government bungalows, and the advantage of the 10 per cent. rule which, thanks to the efforts of the local Government, they at present enjoy. This is a serious practical matter, for a quiet house is essential for each Judge, and normal rents are so high in Bombay that suitable houses cannot be obtained for a reasonable proportion

of a Judge's existing salary. To take an extreme case, the economic rent of an unfurnished but modern Government bungalow to be paid by a High Court Judge was recently fixed by the Public Works Department at Rs. 2,000 per month or about £1,800 per annum at average rate of exchange. Seeing that the gross salary of each High Court Judge is only Rs. 4,000 per mensem before deducting income-tax, this clearly created an impossible position. Moreover the Accountant-General objected that under section 104 (2) of the Government of India Act the local Government could not extend to any High Court Judge the advantages which its own officers enjoy, *viz.*, that their rent of Government bungalows should not exceed 10 per cent. of their pay. Through the good offices of the Government of Bombay, this matter has now been rectified by a new rule issued by the Secretary of State. If, however, the present proposal was adopted, some arrangement would have to be made to prevent the Bombay Judges from being turned out of their existing homes, or deprived of the benefit of the 10 per cent. rule. Arrangements would also have to be made for the adequate housing at a reasonable rent of future Judges of the Court.

22. As regards the question of greater security raised in point 1, this can conveniently be considered along with points 3, 4 and 5 mentioned in paragraph 17. As far as attacks in the local Legislature are concerned, this High Court has so far been fortunate in having nothing said beyond the limits of fair criticism. But it is believed that such has not been the case in all Provinces. And it must be noted as a sign of the times that political adversaries are constantly endeavouring to remove their disputes to a Court of Law, and that this makes it all the more essential that the Judges should not be unfairly attacked. Thus motions have been made to one High Court or another to restrain the holding of the meetings of important Municipal Corporations, or to prevent the giving of an address or casket to the Governor of the Province, or to restrain the holding of a meeting of the Legislative Council of the Province. In the opinion of some Judges motions of this description have been far too freely entertained in the past, and are fraught with danger for the future, as they are liable to bring the Courts and the Legislature into direct conflict. It would, therefore, be a salutary rule if no High Court in the future should have power to interfere with the deliberations of any Legislative Body, apart of

course from its judicial duty to determine in case of necessity whether any particular Statute passed by that Body was in fact *ultra vires*.

23. As regards protection from political or communal pressure in making appointments, it would seem probable that the central Government would be less exposed to it than a local one. The Montagu-Chelmsford reforms have only been in operation some 10 years, but already there are indications that political or communal support can demand its *quid pro quo*. Thus some proposals for appointments have been put forward which could not be justified on merit alone, and which appear to owe their origin to political or communal considerations. Particularly is this the case with subordinate appointments. Accordingly whether or no the High Court is transferred to the Government of India, it would seem desirable that the High Court should be given some right of appeal as regards proposed judicial appointments to which it formally objected.

24. Another risk which should be guarded against is the possibility of some extremist or hostile local Government of the future harassing the High Court by the refusal of adequate financial supplies for its judicial and administrative work, and in other ways which need not be specified. As regards the High Court office staff, clause 8 of the Letters Patent gives some protection in this respect. But it would seem a prudent precaution that a specific right of appeal to the Government of India, and if necessary to the Secretary of State, should be reserved to the High Court on any question of importance. In this connection an attempt has to be made to forecast the future and to anticipate the possible results of the increased voting powers of the people and its elected representatives and the increased Indianisation of the public services.

25. This consideration brings one to the general question of finance raised by the 5th point in paragraph 17. It is a question which particularly affects this High Court, for the finances of the Government of Bombay are said to be in such an unhappy condition that judicial reforms, however beneficial, cannot be effected unless they involve no increased expenditure, and that this condition of affairs is likely to last for many years to come. This High Court has no desire to restate here the specific matters on which at present it is unfortunately in disagreement with the Government of Bombay. But a general question of

principle of some importance appears to arise, *viz.*, whether in matters vitally affecting law and justice it is sufficient to state that necessary expenditure cannot be afforded. If, for instance, the High Court rightly thinks that the condition of litigation in either the High Court or a Subordinate Court will gradually become chaotic unless an increased judicial staff is forthcoming, can want of money be a sufficient answer particularly when the necessary money is available from the surplus net profits of the court affected? It may indeed be questionable whether the High Courts should be regarded as a source of a revenue at all to Government. It would seem sufficient if the civil litigant had to pay Government merely for the cost of obtaining the redress of his own wrongs, irrespective of the cost of criminal litigation. But it is difficult to see why he should be mulcted in addition with the payment of a net profit to Government to the relief of the general tax-payer. However that may be, it would seem likely that though a central Government would closely consider any proposal for increased expenditure, it would not feel hampered by any alleged lack of funds in arriving at a decision on the merits. Moreover the central Government would have their experience of other High Courts to assist them.

26. It may further be pointed out that the exercise by a local Government of its revenue powers might seriously prejudice the proper working of the High Court. For instance, the system of costs on the Original Side is substantially the same as in England, and differs essentially from the Court Fee system prevailing in the mofussil Courts. But to some degree the Original Side has been the subject of attack by certain politicians from the mofussil. The Government of India some 2 years ago raised the question whether the Court Fee system should be adopted in all High Courts. This and other High Courts strongly opposed the suggestion, and the matter was dropped. But quite recently the Government of Bombay has again raised the point with reference to the Bombay High Court alone, and this High Court has again stated its objections. If however the local Legislature was to pass a Bill on the subject, it is arguable that under present conditions it would not be *ultra vires*. It is respectfully submitted that the High Courts should be protected against the possible exercise of any such powers.

27. Another drawback is at present experienced as regards temporary additional Judges. The appointment

of temporary High Court Judges presents in any event certain undesirable features, but these features are aggravated by delay and uncertainty in the appointments or re-appointments. For some years past this High Court has been left in uncertainty as to whether two or even one additional Judge will be given for the current year. The Budget is so framed as to leave this in doubt, and in practice it is not until the middle of March or thereabouts that it is definitely known whether the necessary financial provisions have been passed. If, for instance, the local Legislature has effected a cut in some other direction, or has thrown out certain proposed taxation, then there is a serious risk of at any rate one additional Judge being dropped. Even assuming the Budget gets through, the Government of India has still to be consulted as to the appointments to be made. And in the result the last day of the April sitting may come and the Long Vacation begin without the existing additional Judges or Judge knowing whether they are to vacate their rooms in the High Court and revert to the Bar, or whether they are expected back on the Bench. A Judge's best work can only be done with reasonable security and peace of mind. And these financial methods are not best calculated to secure either. And they also produce an undesirable dependence on the views of the local Finance Department.

28. Turning next to objections to the proposal of the Associated Chamber of Commerce, these have to some degree been stated in considering the points put forward in support of the proposal. But there remains a strong objection for consideration, *viz.*, the probable loss of the personal touch in the future relations between Government and the High Court. *Primâ facie* the local Government should know its own Bench and Bar better than a central Government can. The opportunities for meeting too are better, for even a few minutes' friendly chat at some outdoor sport or social gathering may save two busy men much time, and prevent misunderstandings in official correspondence. It has to be remembered, however, that Government is only in Bombay for some four months of the year, and that even then it is much preoccupied first by the Budget, and then by the sittings of the Legislative Council. The rest of the year Government is at either Mahabaleshwar or Poona and both of these places involve return journeys of a length and at an expenditure of time which Judges cannot afford having regard to their pressing judicial and

administrative work in Bombay. In practice then it is only during the cold weather that the High Court is likely to have the advantage of meeting the senior officers of Government. But having said that, the serious practical nature of the above objection still remains.

29. It has further been objected that a local Government would be more likely to give adequate time and attention to the views of its own single High Court than a central Government would do to any one of 7 or more High Courts placed under it. There is some weight in this, particularly if the central department was overworked. On the other hand this objection to some degree postulates that the central department might not do its duty. Even if that contingency can properly be contemplated, all the 7 High Courts would presumably be affected, and a united protest from them all would probably be more effective than would that of a single High Court subject to its own local Government.

30. It is further urged in objection that the central Government would still have to consult the local Government on many High Court matters, and that this would result in increased correspondence and delay rather than the reverse. To some degree this is probably true. But even under existing circumstances there must necessarily be a substantial correspondence between the central Government and the local Governments over the various High Courts. The only difference in the correspondence of this High Court would be that it would go direct to the Government of India and not to the Government of Bombay except in matters relating to the mofussil Courts.

31. There are doubtless other matters to be taken into consideration, but the dominating and rival contentions as this High Court sees them at present are on the one side the fear of the adverse effects which political changes may cause in the future security and efficiency of the High Courts, and on the other hand the love of their own Presidency with its past proud history and their natural preference to work with men whom they know and who know them. For the moment the High Court begs to be excused for giving its final opinion. As already pointed out it has not yet had the advantage of a discussion on the subject with representatives of its Government. It is possible that in any event its opinion will not be unanimous. But on the following points there will be no disagreement, *viz.*,

that in the view of His Majesty's Judges, the High Courts of India are one of the strongest supports of Government, and that anything that would tend to undermine them would be fraught with danger to Government itself. Agitators have fully recognised this in recent years when they started an attempt to boycott all the law courts of the country. At present, however, the village people base their simple faith on the fact that the High Court stands between them and any attempted *zulum* on the part of the local policeman or executive official. But once that High Court is rendered inefficient, then tyranny or corruption or even incompetence may prove a source of widespread discontent which it would be difficult to stay, and yet if it was unstayed would probably result in some serious disaster. The right solution then of the present proposal is a grave decision to make, and requires a reasonable opportunity for its due consideration.

32. As regards the other proposal for the formation of a Supreme Court, this matter has more than once been mooted in the central Legislature and has hitherto been rejected. This High Court amongst others has already advised against it. The practical difficulties of providing a body of Judges all under 60 and yet with sufficient experience and ability to command the confidence of all the Provinces of India even when reversing the decisions of their own High Courts, are very great, if not insuperable. The choice of a central spot with a central bar would be another difficulty. Possibly an increase in the age-limit to, say, 65, and a reduced length of sittings like the Privy Council might be palliatives. But a peripatetic Supreme Court corresponding to the High Court of Australia would probably invoke too great a physical strain on its Judges, to say nothing of the expenses of new Law Courts and accommodation in each Presidency capital. This High Court, therefore, does not support the present proposal for a Supreme Court.

33. In conclusion the Chief Justice and Judges wish to say that if the Indian Statutory Commission would like to have any oral evidence from this High Court, some of the Judges will be prepared to give it, provided their evidence can be taken *in camera* as was the case with the Chamier and Rankin Committees.



*His Excellency the Governor of Bombay, having circulated the note below to his Colleagues and Ministers, has asked that it should be attached to the letter from the Government of Bombay, No. 1/161, dated the 13th August 1930, on the recommendations of the Indian Statutory Commission.*

With reference to the report of the Government of Bombay, Political Department (Reforms Office), No. 1/161, dated the 13th August 1930, regarding the recommendations of the Statutory Commission, I am submitting for attachment to that report, for your information and that of the Government of India, this letter giving my personal views on what appear to me to be perhaps the most important matters, without going into details on comparatively minor points. In offering these remarks on the aspects mentioned in this letter, I am considering them from the point of view of India as a whole, and not from that of the Presidency of Bombay exclusively: (1) the Constitution of the Provincial Governments, and the Governors' powers; (2) the Constitution of the Central Government; and (3) the future of the Indian Civil and Police Services.

2. As regards (1), I feel that, assuming that there are in a Presidency or Province a good Legislative Council, experienced and broad-minded Ministers, and infrequent emergencies, the Constitution recommended by the Commission, which, except in some matters of detail, has been accepted by my Government, may be workable; but we have to try to organise, of course, on the possibility that these three assumptions, so far from materialising, may prove in fact to be far from the realities. It appears probable that emergencies may frequently occur, at all events at the outset, in one or other Province, and the Governor concerned will find himself in the position of having either to use his emergency powers, which may antagonise his Ministry, or to neglect the interests of a section of the public. A newly-appointed Governor, in particular if from Home, and with no permanent official of the Cabinet responsible to him, will especially find his position difficult should an emergency arise before he has had time to grasp the conditions in his Province, to discriminate between the claims of various communities and parties, and to learn whose advice he can trust. The absence of any experienced official in the Cabinet, on whom he could rely for advice in

dealing with an emergency, will be a conspicuous disadvantage of the new régime, seeing that the Secretaries of Departments will presumably not have the existing right of regular access to the Governor. They will be Secretaries to Ministers responsible to the Legislature, and as such may be put in an awkward position if the Governor calls on them for advice on any particular question. Unless, therefore, the administration runs smoothly and emergencies are infrequent, I have some doubts whether the Constitution proposed for the Provinces will prove workable. I admit that it is very difficult to find an alternative to it, and that there is much to be said for the argument that it is no use having Ministers at all unless they are to be trusted to carry on the administration, with reasonable efficiency and fairness. It is in connection with the Governor's duty to protect the rights of communities that I feel that he may find his relations with his Ministry the more difficult. In the event of a case arising in which the Governor is convinced that the rights of a community are being infringed, he will be placed in the position of having to tell his Ministers that he has no longer any confidence in their judgment of the claims of other communities. Then, even if he does decide to override them and they resign in consequence, he may see them returned at the next election with the same or a larger majority. Consistently with the discharge of his Statutory responsibilities, it would be impossible for him to give way and see a community subjected to treatment which he believed to be unfair. He would therefore have to decide that the situation is so grave that he must declare an emergency to have arisen and take over the whole administration personally. In this event also he will be faced with difficulty in choosing Ministers on whom he can rely to carry on the administration. He will have no Members of Council on whom he can fall back, and will have to select Ministers from among officials and non-officials none of whom may hitherto have held positions carrying such responsibilities. The selection of his Ministers under such circumstances would be an extremely difficult matter. It may be said that a position such as is described above is not likely to arise frequently. It cannot, however, be ruled out, and under such circumstances it would seem that the Governor is given responsibilities without machinery for reasonable warning of the approach of crises and means of meeting them which would prove workable in practice.

3. With regard to (2), the Constitution of the Central Government, while admitting that, when granting an extensive measure of responsible government in the Provinces, it would appear to be anomalous to retain a wholly irresponsible Executive at the Centre, I feel that the system of dyarchy at the Centre suggested by the majority of my Government has the inherent drawback that the political pressure in the Federal Assembly to which the reserved departments will be subjected is bound to weaken their administration. In the case of the Army, for instance, this is likely to have particularly serious results. The alternative appears to be an irresponsible Executive as suggested by the Statutory Commission, but whether this is likely to be a strong Government, which is essential at the Centre, is doubtful unless it is assured of sufficient support in the Federal Assembly to enable it to pass its measures. This can only be secured by creating a *bloc* of members who can be relied upon to support Government measures. Such a form of constitution at the Centre would, of course, be opposed by nearly all political parties in India, except possibly some of the Minorities which realise that their chances of securing any real remedy for their grievances from the stronger communities are remote.

4. The choice, therefore, appears to lie between a form of dyarchy at the Centre, under which the reserved departments will be weakened owing to political pressure in the Assembly, and an irresponsible Executive secure of sufficient votes in the Assembly to enable it to carry through its measures, but subject to the opposition of the majority of the political parties, which will not hesitate to stir up difficulties through the Press and platform, and possibly by actual incitement to violence when favourable opportunities occur. I find myself unable to offer any satisfactory solution of the dilemma, but I think that, if dyarchy is decided upon, it would be best, at any rate at the outset, to include law and order, with the Army and Foreign and Political Affairs, as reserved subjects. Finance will also require special safeguards at first.

5. As to (3)—the future of the Indian Civil and Police Services—I do not think that recruitment for the All India Services by the Central Public Service Commission is likely to secure European recruits with sufficiently high qualifications to justify the rates of salaries which will have to be paid to them, especially if their emoluments are

to be made votable. It may be, and probably is, desirable to retain a European element in the present All-India Services, but it can only be so long as men with first-class abilities can be secured. Second-class Europeans will not be worth their salaries, and rather than employ them I would prefer to stop recruitment of Europeans for the Provinces. Even apart from the question whether suitable Europeans will be forthcoming in future, it would appear that the question of further recruitment of Europeans for the Provinces calls for very careful consideration.

6. The sole object of retaining a European element in the Security Services is to strengthen the administration. This implies that at least the ratios of European and Indian members of these Services suggested by the Lee Commission must be maintained. So far as can be seen, even under present conditions it is doubtful whether this will prove to be the case. With any acceleration of retirements and diminution in recruitment, such as may probably result from the changed conditions of service under the new régime, it may soon be found that numerically the European element has become so reduced that its presence in the Services cannot appreciably strengthen them. With a system of responsible Government in force, the position of an individual district officer who wants to take a strong line in any matter of administration which may arouse opposition will be extremely difficult. As time goes on the increase in the number of Indian officers qualified for the higher selection appointments, and the natural preference which Ministers might give to them, may engender disappointment and discontent among Europeans, which must affect their efficiency. The reduction in the numbers of Europeans in the Services must also lead to a further increase in their social isolation which, added to the effects of the Indian climate, is likely to have a deleterious effect upon them. The above remarks apply perhaps more to the I. C. S. An increase in the numbers of Indians suited for the higher appointments in this Service is bound to occur fairly quickly owing to their natural adaptability for general administrative duties. The duties of the I. P. S. do not appeal to educated Indians in so great a degree. Some Ministers also may possibly be more inclined to insist on a fairly strong European element in the Police for some time to come. It is, however, to be considered whether the existing European element in both these Services is not sufficiently strong to tide over the period of

change to completely Indianised services which must be contemplated if Dominion Status is to be established in the country, and whether any further recruitment of Europeans is required. To continue recruitment of Europeans, when their presence is not likely to increase the strength of the administration, will add to the cost of the Provincial administration—already a serious financial burden—without any corresponding benefit; and will therefore be a justifiable cause for popular complaint.

7. I realise that European officers will probably be desirable at the Centre for some time to come, and, if recruitment of Europeans for the Provinces is stopped, it will be difficult for the Centre to secure officers with sufficient training and experience for their purposes. This is certainly a difficulty, but I think that for some years the Central Government should be able to obtain a sufficient supply of European officers from those now in the Services. Later on, if it is found that the need for Europeans at the Centre is likely to continue, it should be possible to work out an arrangement under which each Province would undertake to train a quota of officers with a view to employment at the Centre. I would also suggest that at the Centre a small service of experts in general administration, Finance, Engineering, Agriculture, Education, etc., might be maintained, the members of which might be lent as required for two or three years to the Provinces in order to advise their Governments on the matters on which they have expert knowledge. The advice of such experts would be of service to the Provincial Governments, and would help them to keep their departments at a higher standard than is possible when each Province has to depend on its own experience and practice for guidance.

---

Telegram from the Government of India, Reforms Office, to the Government of Bombay, No. 2940-S., dated the 31st August 1930.

Please refer to paragraph 27 (1) of your letter, dated the 13th August, No. 1/161. Government of India are not clear whether Bombay Government intend to recommend the continuance of recruitment for Irrigation service on an All-India basis either through the Secretary of State or Public Service Commission, or whether they contemplate this service being provincialised. Very early reply is requested.

Telegram from the Government of Bombay, to the Government of India, Reforms Office, dated the 7th September 1930.

Your 2940-S. of the 31st. Bombay Government recommend the continuance of recruitment for Irrigation service through Public Service Commission on an All-India basis.

---

No. 219-A. C., dated Calcutta, the 15th August 1930.

From—W. S. HOPKINS, Esq., C.I.E., O.B.E., I.C. S., Chief Secretary  
to the Government of Bengal, Appointment Department,  
Reforms,

To—The Secretary to the Government of India, Reforms Office.

I am directed to refer to your letter No. F. 67-30-R., dated the 24th June 1930, on the subject of the recommendations contained in the Report of the Indian Statutory Commission, and to submit herewith the views of the Government of Bengal on such of the recommendations as have a direct interest for them or call for special mention. For convenience of reference the order in which the various subjects have been dealt with in Volume II of the Statutory Commission's Report has been followed and so far as possible an effort has been made to deal with matters of detail in the order in which they are discussed in that report. The Report has been considered by both sides of Government in Joint Meeting and the views expressed are those of Government as a whole.

2. The Government of Bengal are in full agreement with the principles laid down by the Commission that the "new constitution should as far as possible contain within itself provision for its own development" as well as "some element of elasticity enabling adjustments to be made in accordance with the conditions actually obtaining in any given province at any particular time". They consider too that the Commission are correct in their conclusion that the ultimate constitution of India must be federal, if the ideal of a united India as one of the "constituent States of the Commonwealth of Nations united under the Crown" is to be attained.

3. They recognize that it may take years before the ideal is attained and that during this period many difficulties and dangers may have to be faced and overcome. Having regard to the past history of, as well as to the conditions at present existing in the province, they cannot be blind to the dangers of communal trouble and to the risk of

the rate of progress being retarded on this account, but they look forward to the time when there will be a united Bengal and the communal danger will have passed away. Meanwhile they agree with the Commission that provision must be made for dealing with such difficulties, dangers and possible disturbances, and that until they have disappeared the presence of British troops and of British officers serving in Indian regiments will be essential; but they hope that as years go on the British proportion will steadily decrease and that India will gradually but at a steadily increasing rate of progress prove its ability to provide troops which are trusted by all sections of the community and can deal satisfactorily with problems not only of internal security but also of external defence. They recognise also that until the ideal has been attained in matters of civil administration, not only will safeguards be necessary in the interests of minorities but also of the province as a whole and they are satisfied that for these purposes the Governor must be armed with full and ample powers to deal with any emergency that may arise when the ordinary machinery of Government has come to a standstill or when its powers are seriously misdirected. They agree too that similar reserve powers must remain with the Governor-General in matters affecting the Central Government.

4. The Government of Bengal have given careful consideration to the proposals of the Commission which specially concern the provinces. They are agreed that dyarchy must go and that a unitary Government must be established. It follows, therefore, that they consider that the transfer of all subjects including Law and Order to Ministers is inevitable; but they are agreed that such transfer cannot be made without the provision of safeguards. They are also agreed that the safeguards provided in the Report in the overriding power of the Governor and the presence of an official Minister where the need for such is recognised by the Governor in consultation with the Governor-General are inadequate and illusory. The former will in practice prove to be emergency powers. For in normal times it will not be possible for the Governor to interfere with details of administration and prevent dry-rot setting in, or to act against the advice of his Ministers. He will only be able to act at a very late stage when the administration shows signs of breaking down or when a crisis has actually developed. As regards the latter, the

Legislative Council may make the appointment of officials as Ministers impossible by refusing to retain in office a Ministry which is not entirely non-official and the safeguard of having some officials as Ministers will then be non-existent.

5. There is general agreement that there would be many advantages in having an official in the Ministry, as it would facilitate the administration of Law and Order, would increase the chances of maintaining the security services at their present high level and would provide the Ministry with at any rate one member having administrative experience. As regards Law and Order it is to be remembered that the Central Committee came to the conclusion that in Bengal these subjects should be in charge of a Member not directly responsible to the legislature. Further conditions in Bengal are such that for some years to come it will be very difficult to find a non-official who is both able and willing to take charge of Law and Order, and who inspires general confidence. There are also the serious difficulties involved in placing the work of the Criminal Investigation Department under non-official supervision. For as will be seen from paragraph 39 below, Government do not consider that it will be possible for the Governor-General in Council to determine its organisation in the province. As regards the services there is general agreement that it is essential for the success of any system of reforms that not only should Bengal retain the services of the officers already serving in Bengal but that there must be a reasonable prospect of maintaining the Security Services up to the present standard by regular recruitment on the present lines, and it is recognised that both these objects are more likely to be attained if an official is available to administer the services. Lastly Government recognise that a non-official Ministry will be greatly handicapped by lack of administrative experience, especially in a presidency like Bengal where a Governor usually is appointed from the United Kingdom and has no experience of Indian administration of provincial conditions.

6. But it is also recognised that however great the advantages may be in having an official in the Ministry the Governor will not in practice be able to appoint an official as a Minister if the Council is opposed to such an appointment being made or non-officials refuse to form a Ministry if an official is included. In practice he will not be able



to exercise the powers which he possesses in theory, except with the approval of a majority in the Council and their leaders.

7. So far there is agreement, but there is a difference of opinion as to the action to be taken under these conditions. A few members are so impressed with the need for an official in the Ministry in present conditions in Bengal that they urge that a statutory rule should be framed requiring that in Bengal for the present an official should be appointed a member of the Ministry and made responsible for the administration of Law and Order and the Security Services. They feel that the difficulties in Bengal arising out of the communal problem and the terrorist revolutionary movement can only be met by an arrangement of this kind and that until these have disappeared there must be an official in the Ministry. They also argue that a statutory rule would prevent the risk of the Governor being placed in an unpleasant dilemma. He might, in consultation with the Governor-General, decide that it was necessary to have an official in the Ministry and then find that the majority in the legislature refused to co-operate with him in forming a mixed Ministry. In these circumstances he would either have to give way against his better judgment or bring about a crisis on a matter of opinion. On the other hand, if the appointment was required by rule, the amount of opposition to it would almost certainly be reduced, and if a crisis developed, the occasion would be a refusal to work the constitution and not a difference of opinion on a matter open to discussion.

8. But the other members of the Government feel that the disadvantages of having a statutory rule far outweigh the advantages to be derived from having an official in the Ministry. They consider that such a rule would establish a prejudice against the new system of Government at the very out-set, as it would be interpreted by many as a continuance of the system of dyarchy which they cordially dislike and desire above all to be rid of. It would also raise an intense feeling of bitterness among the opponents of the rule, which would increase the difficulties of administration to a far larger degree than it would be facilitated by the presence of an official in the Ministry. They are therefore strongly opposed to the proposed statutory rule.

9. But if at any time a Ministry is appointed, which includes an official, whether by the Governor with the

approval of the legislature and the consent of the non-officials, or under the requirements of a statutory rule, it is recognised that considerable administrative difficulties may arise if such a Ministry is defeated in Council and compelled to resign. There is a difference of opinion as to whether the official should be reappointed by the Governor when forming a new Ministry, but the view generally taken is that unless a Ministry had been defeated and forced to resign in connection with the policy of the official Minister which had met with the approval of the rest of the Cabinet, then there is no objection to the reappointment of the official as a member of the new Cabinet. Another section of the Government hold the view that an official who has been a member of a Ministry that has suffered defeat should not be eligible for reappointment under any circumstances. But against this view it is urged that this is placing on the official member of the Cabinet an embargo which cannot be applied to the non-official members and that it will be disadvantageous to the province as it will reduce still further the number of officials from whom the selection can be made by the Governor. A third view is that with regard to reappointment after the defeat of a Ministry the position of all Ministers including the official Minister should be the same. It is agreed however that when a Ministry has fallen because of an official Minister's policy, then it will be practically impossible for the Governor to reappoint him as a Minister. It will be necessary in these circumstances either for the official ex-Minister to have the right to retire, in which case he will be entitled to receive an extra pension as recommended in paragraph 335 of the Report, or for the Governor to have the power to appoint the ex-Minister to some other official position. It is agreed that this point is of great importance because the decision on it may considerably limit the number of officials from whom the Governor can select an official member of the Ministry. For apart from the uncertainty in the matter of tenure of office it is recognised that it may often happen that an officer for financial reasons will not be able to take the risk of joining a Ministry if the defeat of the Ministry necessarily has the result of putting him out of employment and compelling him to go on pension earlier than was his intention. It is recognised that a certain amount of risk must be faced by officers, but it is felt that it should be minimised as far as possible and that no obstacles other than those which apply generally to members.

of the services should be placed in the way of the re-employment in the ordinary line of an official who has accepted the offer of the Governor to be a member of his Ministry and whose services as such are no longer required. The orders in force which forbid the re-employment of a Member of Council in any other post should therefore be modified.

10. Having considered the possibility or necessity of providing safeguards other than the overriding powers of the Governor the Government of Bengal desire to mention only one suggestion, *viz.*, the addition of a Second Chamber to the constitution and the distribution of the seats in that chamber and in the Legislative Council in such proportions that the more stable elements in the province shall have an effective voice in all matters and be able to prevent the Ministry from taking an extreme or partisan line. The objection to this proposal is that these bodies are legislative, not executive, that they are not in session for more than a small part of the year, and that therefore they provide no safeguard in the matters of daily administration.

11. While there is some difference of opinion on the question whether the Governor should have the power to include an official in his Ministry, there is complete agreement that save an official no person who is not already a member of the legislature should be eligible for inclusion in the Ministry. Some members of Government would go further and make nominated members ineligible. It is also agreed that all Ministers should be members of the Cabinet and there should be no members of Government outside the Cabinet. The other recommendations of the Commission in paragraph 46 of their Report that ministerial salaries "should be alterable only by a provincial Statute regularly passed through all its stages" and that "the only vote of censure which could be proposed should be one against the Ministry as a whole carried after due notice" are also approved. The second of the recommendations is important because the Government of Bengal are agreed that the Ministry must have joint responsibility and that the success of a vote of censure directed principally against one of the Ministers should necessarily involve the defeat of the Ministry as a whole. It is probable that in Bengal in the future as in the past the Ministry will usually be the result of a coalition. Experience so far has shown the fickleness of many of the

supporters of such coalition Ministries; and it is hoped that in the future when the supporters of one of the Ministers realize that by joining in an attack on another member of the Ministry they must inevitably endanger the position of their own leader they will be less ready to give support to the personal animosities and hostilities which far more than any differences of opinion on political issues have been responsible for the fall of Ministries in Bengal.

12. On the question whether the Governor should appoint his own Minister or select a Chief Minister and allow the latter to nominate his colleagues, some members are opposed to the proposal to have a Chief Minister. But there is agreement that if there is a Chief Minister, then to start with the Governor should appoint his Ministers in consultation with the Chief Minister but that as the constitution develops the Chief Minister will take a larger part in choosing the other Ministers. It is agreed that the allocation of portfolios should be done by the Governor, but that before making the allocation he should consult the Chief Minister.

13. The suggestion that there should be an official Secretary to the Cabinet is approved, and it is generally agreed that he should be a permanent official. As his duties will be light, it will probably be convenient as at present to combine them with those of some other post.

Some apprehension is expressed of the effect of the suggestion in paragraph 51 of the Report that by means of this official, the Governor "would be kept impartially and fully informed of the course of business". At the same time it is recognised that if the Governor does not preside over the meetings of his Ministry, he may remain in ignorance of important facts affecting the administration. Time will show what is the best method of getting over this difficulty.

14. But it is generally recognised that in addition to and distinct from the Secretary to the Cabinet and whether there is an official Minister or not, there must be a senior official whose duty it will be to keep the Governor in touch with all that is going on and, in a province like Bengal where the Governor is usually appointed from the United Kingdom and lacking in experience of Indian conditions, to give him advice on administrative details. This official should be a senior officer with wide administrative experience, not in charge of or responsible for any depart-

ment, but attached to the Governor. He should not be Secretary to the Cabinet, but his administrative experience should be at the disposal of the Cabinet if the members desire to avail themselves of it. It is generally felt that there is a great risk under the revised constitution of the Governor getting entirely out of touch with details of administration when his Ministers are mostly if not entirely non-official, and of his being unable to detect or repair defects in the machinery until they have become serious or the machinery has come to a standstill. With an expert adviser on his staff, he will be able to make adjustment and do necessary repairs at an early stage and prevent a serious breakdown.

15. On the question whether the Governor should preside over the meetings of the Ministry no definite conclusion has been reached, the general opinion being that this question must be left to the decision of each Governor and that it will solve itself in the course of time. Against the view that the Governor should preside over the meetings it is urged that there is a real risk that in course of time he will be considered as identifying himself with the party or groups from which the Ministry is formed.

16. It is agreed that the responsibility of the Ministry to the legislature should exist for the whole provincial field, and the recommendations of the Commission in paragraph 50 of their Report regarding the purposes for which the Governor should possess overriding powers are accepted. It is agreed that the Governor in exercising these powers must be acting under the superintendence, direction and control solely of the Governor-General and not of the Governor-General in Council. The recommendations of the Commission as regards the Governor's powers to restore rejected demands and to secure the passage of legislation by certification are also approved, and lastly it is recognized that he must have the power sketched out in paragraph 65 of the Report to deal with a state of emergency.

17. The proposals of the Commission regarding the provincial legislature are generally approved save by one member who considers that the prospects of co-operation in Bengal are so gloomy that the distribution of seats in the legislature should be such that a combination of the landlords, the Muhammadans and the backward classes together with the British non-officials will give the co-

operators at times a majority and at all times at least an effective minority. His views are given at length in Appendix A. It is agreed that the life of the Council should be five years, but Government as a whole are opposed to the proposal in paragraph 135 of the Report to extend this period—it may be up to seven years—in order to make the expiry of the life of the provincial Council coincide with that of the Federal Assembly. In their opinion representatives once elected to the Federal Assembly should hold office till the expiry of the life of the Assembly and should not be unseated when the Council which has elected them to the Assembly is dissolved. It is also agreed that some enlargement of the Legislative Council is desirable in order to secure manageable constituencies for the election of its members, but it is recognized that if the proposal for a Second Chamber is adopted the increase in the size of the Council must be proportionately reduced. The proposal that it should be open to the Legislative Council to revise its numbers periodically through the method of “constitutional resolution” is also accepted, but one member would prefer that any scheme transmitted under the procedure set forth in paragraph 95 of the Report should be transmitted to the Governor-General in Council, and not to the Governor-General.

18. As regards the constitution of the Council there is irreconcilable disagreement between the Hindu and Muhammadan members of Government on the subjects of communal representation and the proportion of seats to be allotted to the Muhammadan community. The Hindu and Muhammadan views are forwarded in Appendices A and B to this letter and a further note representing Muhammadan views will be subsequently forwarded. It was agreed that this disagreement should be recognized and that the views of the European members should be submitted to the Government of India. Their view is that however undesirable in principle communal representation may be, conditions in Bengal are such that the present system must be continued until the two communities agree upon some other method of representation. They consider it most desirable that communal differences should die down; but they regard this as an ideal which is not to be attained in the near future. Consequently they consider that at present, from the point of view of practical administration, separate electorates are unavoidable.

19. On the question of the basis of distribution of seats in the Council between the Hindu and Muhammadan communities the European members are agreed that the present allocation of seats which is based on the Lucknow Pact is unfair to the Muhammadans. They also consider the recommendations of the Simon Commission, which, so long as Muhammadans in other provinces are given weightage, refuse to the Muhammadans in Bengal the position to which their numerical superiority entitles them, to be unsound in principle. In their view it is unfair under a federal system of government to maintain in a position of representative inferiority in one of the states the community which is in the majority numerically, on the ground that in other units of the federation concessions have been granted to the same community. After careful examination of rival schemes they have come to the conclusion that representation on the basis of population is the fairest method of distributing the seats in the general constituencies between Muhammadans and non-Muhammadans and they consider that any weightage that is to be given to the non-Muhammadans in respect of their wealth, education or position should be allowed for in the special and not in the general constituencies. Experience has shown that all seats in non-European special constituencies are occupied almost invariably by non-Muhammadans. They are satisfied that this state of affairs is likely to continue for many years and that any superiority in numbers which the Muhammadans may possess in respect of representation in the general constituencies will be largely, if not more than, counterbalanced by the superiority of the non-Muhammadans in the special constituencies.

20. The recommendations of the Commission regarding the representation of the depressed classes are accepted by the Government of Bengal in principle, but they are not prepared to agree to the proportion suggested in paragraph 80 of the Report, which they consider too high. In their opinion, before any decision regarding the proportion is arrived at, it will be necessary to examine the number of people of the depressed classes in the various areas in which they are largely concentrated, and to adjust their representation with some regard to the total representation of these areas. The proposals for European, Anglo-Indian and Indian Christian representation are accepted, but Government are unable to agree to the recommendation of the Commission that the official bloc should be eliminated.

Some members consider that for several years to come it will be necessary to have the Secretaries in the various departments present in Council as members of the Council. They urge that it will be difficult for non-official Ministers to have the intimate acquaintance with the business of these departments, which is required to enable them to deal with the innumerable points of detail which are continuously being raised by the members of the Legislative Council, and that it will facilitate the transaction of business by the Ministers if they have the Secretaries of the departments in their charge available in Council to assist them. The other members admit the difficulties in which Ministers will be placed, at any rate at the beginning of the new régime, if Secretaries are not present in Council, but consider that such an arrangement may place Secretaries in a very difficult position, as they may be expected to support by vote and speech measures of which they do not approve.

21. The Government of Bengal agree to the proposal to retain the representation of the Universities in the Council, but they consider that the electorate for this constituency should be changed and limited to the governing bodies, *i.e.*, the Syndicate and the Senate in the case of Calcutta University and the Court in the case of Dacca. They are agreed that such an electorate is more likely to return individuals of the type associated with University constituencies than the present system of making all graduates members of the electorate, which does not tend to the election of candidates of the proper calibre.

22. To the recommendations of the Commission on the subject of the landholders' constituencies the strongest objection is taken by several members of Government. They urge that the landholders who are returned by general constituencies do not represent the landholders' interests in the Legislative Council but are governed by the views of the people in their constituencies and of the political party which has supported them in their elections. A further argument used is that the influence of the landholders' representatives in stabilising the constitution is valuable, and, as it is considered important to introduce into the Council every possible stabilising element, there is general agreement that the separate landholder constituencies should be retained. There is some difference of opinion on the question whether their number should be



increased proportionately to the increase in the number of members of the Council, the majority being in favour of giving the landholders the same proportion as in the present Council. But the actual number must depend on the decision about a Second Chamber. .

23. The proposals for the representation of commerce and labour are approved, but Government are agreed that no special steps need be taken to secure the presence of women in the Legislative Council. In their opinion the proposals of the Simon Commission generally in respect of the representation of women are far in advance of what is either required or justified by present conditions in Bengal.

24. The proposals of the Commission regarding nominated members are approved, but the suggestion made above that Secretaries should be members of the Legislative Council will have to be borne in mind in deciding the percentage of the members of the Council to be nominated from other sections of the community.

25. The Government of Bengal are in full agreement with the proposals of the Simon Commission regarding the procedure for introducing alterations into the constitution of the provincial legislature by constitutional resolution subject to the remark made in paragraph 17 above. They accept the proposals of the Commission regarding the legislative powers of the Council and the Governor's powers in relation to legislation and finance, but consider that there should be some safeguard against reckless expenditure by a Ministry before a general election. The safeguard should take the form of power conferred on the Governor to hold up expenditure for a time.

26. On the question of the extension of the franchise opinion is divided, the majority being in favour of extending the franchise in the manner proposed in Appendix V of the Bengal Report. There is agreement, however, that if the franchise is extended it should not be lower than that now in force for union board elections. On such a franchise it is estimated that somewhere about 8 per cent. of the total population would be enfranchised, and Government agree that it would be undesirable to establish some new form of franchise in order to increase this figure to the 10 per cent. recommended by the Simon Commission. Government are agreed, however, in opposing the recommendations of the Commission regarding the qualification of women voters. They consider the propo-

asals not only unworkable in themselves but also inequitable. As stated above, they are agreed that there is no need at present of any special measures to bring more women on to the electoral roll. Further they cannot accept the recommendation of the Simon Commission that after 15 years a second Franchise Committee should be appointed to review the progress that has been made and the suitability of the electoral qualifications then existing, and they are not in favour of accepting any such arbitrary figure as 20 per cent. as the basis of a further extension of the franchise. In their opinion this matter should be left to the Council to deal with by means of constitutional resolution, and there should not be any periodical Franchise Committees appointed solely on a statistical basis without regard to the conditions generally prevailing in the province.

27. They accept the proposal of the Commission that limits should be defined and enforced for election outlay.

28. On the question of a Second Chamber in Bengal opinion is divided, some members being strongly in favour of such a Chamber and the remainder being doubtful. In these circumstances it has been decided to maintain the opinion in favour of a Second Chamber previously expressed in paragraph 10 of Part II of the Bengal Report, 1929. Should a Second Chamber be appointed, they are agreed that the functions should be those previously recommended. The suggestion of the Simon Commission for constituting an expert revising body to which legislative proposals can be submitted between the report and the third reading stages is not accepted.

29. On the questions of the boundaries of the province and of excluded areas and their treatment, there is general agreement that the introduction of whatever reforms are finally decided upon should not await the completion of the labours of the proposed Boundary Committee. This Committee will require a very long time to investigate fully the proposals for the revision of boundaries, and it is considered undesirable to keep the province indefinitely in a state of tension pending an enquiry into a matter which will not affect Bengal very much. One member suggests that the Boundary Committee might consider the restoration of the Eastern-Bengal and Assam province, but the general feeling is that it will be a great mistake to complicate the introduction of reforms by the revival of the controversies connected with the birth and death of that

province. There is general agreement that when the Boundary Commission is set up, it should have definite terms of reference given it by the Government of India and that it should not be open to any one to raise new boundary questions before it.

30. Enquiries are being made as suggested in paragraph 128 of the Report as to whether Darjeeling should continue to be in any degree excluded from the normal constitutional arrangements of Bengal, and the result of these enquiries will be reported later when they are completed. The proposals of the Commission regarding excluded areas do not meet with the approval of the Government of Bengal. The only area of this kind with which they are concerned is the Chittagong Hill Tracts, and they propose that this area should continue to be administered in the same manner as at present *mutatis mutandis*.

31. The Government of Bengal have examined with interest the proposals regarding the Central Government and the general feeling is that too little attention has been paid to the need for strengthening the Central Executive *vis-a-vis* the Central Legislature. The need for a strong Central Government is daily becoming more and more evident, and the Government of Bengal view with apprehension any proposals which will weaken rather than strengthen the position of the Executive at the centre. In their opinion good administration in recent years has been hampered by the weakness of the Central Executive *vis-a-vis* the Central Legislature, and they consider that in some respects the proposals now put forward will render the position of the Executive even worse than it is at present. They have been specially struck by the fact that in paragraph 179 of the Report the Commission accepts, apparently without any misgivings, the fact that their proposals for the composition of the Federal Assembly will give the Government an even smaller proportion of the votes in the Assembly than it has at present. One consequence will be that this will render the task of the Executive in getting through the Assembly measures which they consider essentially necessary in the interests of good administration more and more difficult and will throw a heavier burden than ever on the shoulders of the Governor-General as regards the use of his emergent powers. The Government of Bengal are agreed that there can be no retrogression at the centre, but they do not consider that

the strengthening of the position of the Executive in the legislature can be classed as retrogression. The Commission have deliberately rejected any proposals for dyarchy or divided responsibility at the centre, and in paragraph 173 they have expressly stated that the Governor-General in Council cannot be responsible to the Indian legislature in the same sense as a British Cabinet is responsible to the British Parliament. The Executive therefore will have a very heavy burden to carry and the Government of Bengal consider the Commission is wrong in weakening instead of strengthening the position of the Executive in the legislature.

32. Apart from these general comments the Government of Bengal accept the proposals of the Commission for the formation of the Federal Assembly by means of indirect election on the basis of proportionate representation, although one or two members of Government are apprehensive of the possible effect this method of election will have on Muhammadan representation unless Muhammadans are represented in the Provincial Council on a population basis. But Government are opposed to the proposal that the same individual should be allowed to sit in both the Provincial Council and the Federal Assembly. Both these bodies are likely to be in session about the same time, more especially during the budget session, and it is most undesirable that either body should not be able to count on the services of all its members when important business is to the fore. A member of the provincial legislature who becomes a member of the Federal Legislature must resign his seat in the former.

33. While there is general agreement that the system of proportionate representation should be followed in electing members to the Federal Assembly, some members of Government, in order to avoid the danger of a reduction in the Muhammadan representation owing to a split in their votes, are in favour of having a minimum number of seats reserved in the Federal Assembly for each community. They consider that such a suggestion would in part meet the difficulties of other communities in other provinces. The Muhammadan members claim that the minimum should be  $33\frac{1}{3}$  per cent. of the seats in the Federal Assembly, but this claim is strongly opposed by the Hindu members, who urge that if representation in the province is to be on a population basis the same criterion should be applied in

the Central Assembly, and is not supported by the Europeans. Other members of Government feel that such a proposal for reservation of seats is undesirable and will encourage disunion among the Muhammadan members of Council in Bengal. The sole ground for separate electorates and proportionate representation is to secure adequate representation of communities, and if the representatives of any community in question put personal animosities above communal interests then the community must take the consequences.

34. The Government of Bengal are opposed to the suggestion of the Commission that allowances paid to the members of the Federal Assembly should be charged on provincial funds. In their opinion charges on account of a central body should be paid from the central fund. They agree to the proposal that the life of the Assembly should be five years, but they are of the opinion that the Governor-General ought to have the power to dissolve the Assembly and order a fresh election if at any time he considers such a course necessary. This is all the more necessary if the proportion of Government members in the Federal Assembly is to be reduced. For a position may occur in which the Executive is up against the majority in the Federal Assembly, but the Governor General believes that the views of the majority in the Assembly do not properly represent the feeling in the Federal States. In such circumstances it ought to be possible for him to dissolve the Assembly and have a fresh election and so ascertain the opinion of the federal units before being compelled to consider, if necessary, the question of using his emergent powers.

35. They agree that seats in the Federal Assembly should be allowed to the federal units on a population basis, but they are not in favour of increasing the size of the Assembly, more especially if with an increase in the size the proportion of Government members is to be reduced. If election to the Federal Assembly were direct, there might be some justification for increasing its size so as to reduce the size of the electoral areas; but the same necessity for an increase in numbers does not arise when the method of election is indirect and the electoral bodies are the Councils in the federal units. They agree that there should be nominated official members of the Federal Assembly in addition to the members of the Governor-

General's Council. They approve also of the recommendations for the representation of the Indian Christians and Anglo-Indian minorities. They accept the proposals made for filling up casual vacancies as being the best way out of a difficulty. They do not like the principle of substituting a nominated member for an elected member, but they recognize that any other method of filling the vacancy might lead in the course of the life of the Assembly to considerable changes in its composition.

36. They agree that the Council of State should be retained and that its life should be seven years, but they are not in favour of the proposals for its composition. They would prefer to continue it in its present form and with its present electorate. They are not in favour of any special arrangements to secure the presence of women in the Council of State and are opposed to creating any women's franchise for that body.

37. As regards the powers of the Central Legislature they accept generally the proposals of the Commission subject to the general remarks made above about the necessity of strengthening the Executive *vis-a-vis* the Legislature. The proposals regarding its financial powers and the division of resources between the Central and the Provincial Governments will be dealt with later in discussing Sir William Layton's proposals. On the question of the constitutional position of the Governor-General in Council the Government of Bengal are agreed that the decision of the Commission not to introduce dyarchy at the centre is correct. They consider that the objections stated in the Report against dyarchy in the provinces are conclusive against the introduction of any such system in the centre. They approve, therefore, of the proposal to maintain the present position of the Governor-General in Council and to have the Governor-General as the actual and active head of the Government. They can see no advantage in the proposal to place upon the Governor-General himself the responsibility of selecting and appointing the Members of his Council, and would prefer the present arrangements to continue. As they are not in favour of any changes in the present arrangements they consider that the proposal that the Commander-in-Chief should no longer be a Member of the Executive Council and should not sit in the legislature is a mistake. They recognize that in the past difficulties may have arisen, but

they consider that the adoption of this proposal will only increase the difficulties of the reformed Government. They agree with the proposal to have a Member of the Governor-General's Council to lead the House and consider the present position, under which a Member in charge of an ordinary department has to undertake the duties of the leader of the House in addition to his ordinary duties, is an impossible one and tends to weaken the position of the Central Government *vis-a-vis* the Assembly. They have no objection to the non-official members of the Executive Council being drawn from the ranks of members of the Central Legislature, provided it is recognized that this does not involve any theories of the Central Government being responsible to the legislature; one member of Government would like a provision that the majority of the Council shall be Indians.

38. On the subject of the relation between the centre and the provinces the Government of Bengal are agreed that the proposals of the Simon Commission should be accepted, and that the methods of influence and assistance recommended in their Report are sound. They agree that the Central Government should be able to control the financial policy of the provinces so far as loans are concerned. In emergencies they agree that the control must be exercised by the Governor-General through the Governor and not by the Governor-General in Council through the Governor in Council.

39. There is one point, however, in these recommendations to which the Government of Bengal take strong exception, and that is the recommendation in paragraph 190 in respect of the Central Intelligence Department. They consider that it is impracticable for the work of that department in the provinces to be conducted by means other than those of the regular police administration, and that it will be impossible for the Governor-General in Council to determine the conditions of the organization of the Criminal Intelligence Department in the provinces.

40. On the subject of the Commission's proposals regarding the Army the Government of Bengal do not propose to offer any detailed remarks. Their general conclusion is that the reasons advanced for making the changes proposed in the Report are insufficient and that it is most desirable that the existing arrangements should not be altered at present. The proposed changes will not remove

the legitimate agitation that is conducted in connection with the Army in India. There is undoubtedly a very general desire that the process of Indianisation in the Army should be hastened and everything possible should be done to attain this end. In the view of the Government of Bengal the number of army schools and army training institutions in India should be increased and definite steps should be taken to provide a much larger number of recruits than at present for the manning of the superior ranks in the Army; and development on these lines is much more desirable than the constitutional changes advocated by the Simon Commission. The Government of Bengal are in full agreement with the suggestion that the Imperial Government should contribute to the cost of the Army in India in respect of matters affecting Imperial interests, and recommend that if such an agreement is arrived at it should not be made in a niggardly fashion. They consider too that the present system under which the Army Department contracts to carry on within a fixed sum each year should be continued so that as many causes of friction as possible may be removed. There is one suggestion, however, to which they take the strongest objection, namely, that every demand for Imperial troops for the purpose of quelling disturbances and maintaining order should be put forward by the express authority of the Governor of the province himself. In their opinion, if there is a unitary Government and joint responsibility, it is unwise to transfer the responsibility for the use of troops from the Ministry to the Governor in person.

41. On the question of the separation of Burma the Government of Bengal desire to express no opinion, although it is obvious that Bengal like the rest of India will be intimately concerned in the financial questions that will arise for settlement if separation is effected. Nor do they desire to express any opinion about the questions regarding Indian States.

42. The proposals regarding the Services they consider to be specially important, for they feel that at times it is not sufficiently recognized that the steady progress of India towards the ideal set forth in the preamble to the Government of India Act depends very largely on the assistance rendered by expert and contented Services. It would be dangerous, if it is still desired to recruit British officers, to ignore the fact that there is an increasing sense of un-



uneasiness among the British members of the Services. This is perhaps due less to the nature of the recommendations of the Commission, which at least on paper maintain the existing protection, than to a growing apprehension about the intentions of the British Government and the Government of India. This uneasiness will react rapidly on recruitment, and if the recruitment of British officers is to continue, effective guarantees of the rights and conditions of Service must be devised. The Government of Bengal consider it essential, therefore, that the utmost care should be taken in introducing any further reforms to protect the present members of the Services in the enjoyment of the rights to which they are at present entitled and to do nothing which will in any way check regular recruitment for these Services.

43. As regards the Security Services the Government of Bengal are agreed that all-India recruitment should continue and that the recruitment should be through the Secretary of State who should guarantee the conditions of service. These conditions should not be open to alteration without the assent of the Secretary of State in Council. As the Secretary of State is the authority responsible for recruitment he should have the power to require provinces to employ members of the all-India Services in such number and in such appointments as he may think fit. The present members of these Services should retain their existing rights and privileges and the conditions of service for new entrants should be the same as for the present members except for the right to retire on proportionate pension. But Government realise that the terms of recruitment may require to be altered as time goes on if recruitment on these terms does not provide a sufficient supply of officers of the right type. The terms of service will be largely conditioned by the interaction of supply and demand.

44. On the question of increasing the rate of Indianisation in these Services they are agreed that the present rate should be continued and that acceleration of Indianisation is not desirable, especially as it is understood that the rate of Indianisation has been much more rapid than was anticipated. Indeed the Mahomedan members would like it retarded on the ground that the present rate is working unfairly to Mahomedans. They urge that if however the present rate is maintained, then Indianisation

should be carried out gradually, and not to the detriment of any particular community, but with due regard to the securing of the widest possible confidence in the administration.

45. On the question of the recruitment for the non-security services there is no agreement. One member is of the opinion that recruitment for non-security services must be made by the Provincial Government, another member thinks that for political reasons it is not possible to press for all-India recruitment for any of these services, and a third points out that so far experience in Bengal has not shown that there is any likelihood of the recruitment on a provincial basis of officers from abroad having any chance of success. The Moslem members would stress the point that there should be proportionate and adequate representation of the different communities in the public services.

46. The Government of Bengal would draw special attention to the recommendation in paragraph 332 of the Simon Commission Report supporting the recommendation of the Lee Commission regarding the adequate provision for safeguarding service pensions, and urge the importance of carrying this recommendation into effect should the need for it ever arise. For they feel that there is increasing anxiety among some members of the services regarding the security of their pensions and an apprehension that the time may come when they will find that their interests have been sacrificed for political ends. The Government of Bengal do not consider that there is any substantial basis for this apprehension, but at the same time they cannot deny that it exists and they consider that it would conduce greatly to the feeling of security among European members of the Services and to the chance of getting a steady stream of recruitment, were a solemn undertaking given that their rights to pension shall be adequately safeguarded, or if arrangements were made to hold the funds required for the payment of their pensions and provident funds in Great Britain.

47. They would also draw attention to the recommendation of the Commission regarding the need for making adequate arrangements for the medical treatment of European officers. This affects not only officers at present serving but is important as affecting recruitment in the future. For it will be impossible to obtain European

officers for this country if they cannot be assured of treatment for themselves and their families by European doctors of an adequate standing.

48. They support the recommendation of the Commission that an additional pension should be given to Governors of Provinces who belong to the Services. They also support the recommendation that an officer who has been appointed a Minister and has been turned out of office should be entitled to some increment to his pension if he is not reappointed or posted to some other post on active service. They also with one dissentient support the recommendations regarding the need for a Provincial Public Service Commission and the majority agree that the members thereof should be appointed by the Governor. They are also in agreement with the remarks regarding the recruitment of Anglo-Indians. Failure to obtain recruits from this community through the ordinary channels of recruitment is leading to difficulties in Bengal.

49. As regards the recommendations of the Commission in connection with the High Courts, it is agreed that there is no objection to the High Court of Bengal remaining under the Government of India, provided all other High Courts are placed in the same position and the Central Government meets the charges for it, after making the necessary adjustments suggested by the Commission. The present anomalous position in which the Government of India control the High Court while the Government of Bengal pay for it should cease. If other High Courts remain under the local Governments concerned, then the High Court of Calcutta should be placed under the Government of Bengal.

50. Whatever be the final decision about the control of the High Court it is desirable that the present arrangement under which the selection of persons to be appointed to the Provincial Judicial Service rests by law in the hands of the High Court should be changed. All appointments to Provincial Services should be made by the local Government, though in the case of the Judicial Service, the advice of the High Court should be taken before the final selection is made. The present system of making appointments to the High Court on the recommendation of the Chief Justice should also be modified, the appointments should be made on the recommendation of the Governor after consulting the Chief Justice.

51. The Government of Bengal have no detailed criticisms to make regarding the recommendations of the Commission on the subject of the relations between the Home and the Indian Governments. They agree that the Secretary of State's Council should continue to exist and that it should perform the functions mentioned by the Simon Commission. They approve of the conditions of appointment proposed by the Commission, *viz.*, that the interval between leaving India and the appointment to the Council should not exceed one year and that no member appointed on account of his Indian experience should be eligible for re-appointment. They further recommend that more use should be made by the Secretary of State of his Council for the purpose of advice on all matters affecting India. They consider that it is unsound that important decisions regarding the governance of India should be taken by the Secretary of State without any previous discussion with his Council. On the constitutional question whether there should be delegation of powers by the Secretary of State by convention as in the case of the fiscal convention, the Government of Bengal are in agreement with the recommendation of the Simon Commission.

52. In conclusion, I am to say that the general position of the Government of Bengal is that the Simon Commission Report sets forth a logical scheme of advance for India towards the goal laid down in the preamble to the Government of India Act, which they are prepared to accept as a whole, subject to the recommendations they have made on matters of detail, and to the general objections raised by one member in the note which will be found in Appendix A. But they desire to make it plain that in their opinion no advance can safely be made beyond the recommendations of the Commission. More especially they desire to emphasize their opinion that no further advance should be made in the centre until it is certain that the Provincial Governments are exercising their increased powers and responsibilities with due regard to the interests of all classes and communities and until experience in the provinces has shown that risks can be taken at the centre with a reasonable chance of safety.

53. With reference to your request for an estimate of the reception which the recommendations of the Commission have received in the province I am to say that the reception accorded to the first volume of the Report of the Indian

Statutory Commission by European papers and by the *Bengalee* was favourable but that the nationalist Hindu papers condemned it, the *Basumati* describing it as "crude and barefaced" propagandist literature. Apart from some favourable comments in the European papers and the *Bengalee*, the second volume of the Commission's Report was received with a chorus of disapproval. This was only to be expected on the part of the nationalist press, but there is also a strong Muhammadan feeling in Bengal that the proposals for Muhammadan representation in this province are unfair, that the Muhammadan majority in Bengal is being sacrificed to Muhammadan minorities in other provinces, and that Muhammadan interests in the proposed Federal Assembly will be seriously affected. The Moslem press generally, which was at first more favourable than the Hindu press, has lately changed its view for the worse and now condemns the Report in very much the same language as that used in the Hindu press. At the same time there can be no doubt that the Report has aroused much interest, and has probably received more serious attention than the superficial comments upon it in the press would appear to indicate. Not only has there been a large demand for the Report itself, but criticisms in the press have been frequent and not least in those papers which pretend that the report is worthless, and there are indications that the previous wholesale condemnation of the Report is giving place to detailed criticism of and opposition to some of the proposals contained in it.

54. I am to add that Sir William Layton's financial proposals will be dealt with in a separate letter.

---

#### APPENDIX A.

One member of Government is of opinion that if the recommendations of the majority of the Government are accepted it will inevitably lead to a rapid disintegration of the structure of society in India—including British and Indian. On the scheme accepted by the majority racial bitterness will increase intensely. The elections on the scheme proposed will be fought on the racial issue, sentiment and the activities of the youth of the country will play an important part. On that scheme, in his opinion, the party of extremism will sweep the polls and inoculate the voters and others with the virus of hatred towards England. Those Indians who believe in working out India's political evolution by co-operating with England will be hounded out of public life. Under such conditions it will be impossible to attain the ideal of responsible

Government in India as an integral part of the British Empire, for it is difficult to conceive of a self-governing India to form an integral part of the Empire with bitterness and hatred towards its head and distrust and suspicion which that head as a consequence will naturally harbour towards such an important component part of the Empire as India. Bitterness and hostility to England will have other very serious consequences. The volume of trade between India and England is very considerable. Experience shows that bitterness and hostility intensify the boycott movement. Intensity of the boycott movement not only affects purchasing of British goods but it has the effect of decreasing trade all round, for one indirect effect of the boycott movement is to make less money available for circulation. The tense atmosphere which prevails at times of acute agitation also unsettles the minds of traders and commercial men and they naturally hold back from business ventures. The present structure of society in India is based on co-operation and good-will between England and India. The activities to which reference has been made will, in his opinion, inevitably lead to strangulation of the economic life of the people. Such strangulation will increase distress in all classes and will very prejudicially affect receipts of all governments, provincial and central. As already mentioned, if the recommendations of the majority be accepted, then those who are intensely anti-British and are for severing British connection will be returned to provincial legislatures in even larger numbers. If their leaders accept office then we shall have in the provincial Governments a state of things similar, but on a much extended and intensified scale, to what we have at the present moment in the Corporation of Calcutta. If these leaders do not accept office then they will be in a position to make it impossible for the constitution to function. Apart from other reasons the different groups of disorganised and disheartened co-operators whose number will be small and who will not be knit by a common party bond will not even be an effective minority and a number of them will go against the ministers. From past experience the conclusion about wrecking the constitution by playing upon personal jealousies is fully justified. One important safeguard for maintaining the structure of society in India and for preventing the untoward consequences referred to above will be, to formulate a constitution, particularly in the provinces, under which those who are willing to work for the ideal of responsible government as an integral part of the British Empire may be returned in such numbers that at times they will be in a majority and at other times will be an effective minority. In the constitution to be framed those who are for severing British connection should have a similar position, that is to say, they might at times be in a majority and at other times in an effective minority. The object the member has in view will be defeated if the framing of the constitution be such that those who are willing to work for the attainment of responsible government as an integral part of the British Empire will always be in a perpetual majority for such a position will inevitably tend to a sense of hopelessness and all that follows from hopelessness in the party of their opponent. That

object will be more dangerously defeated if those who are in favour of cutting adrift from England and for increasing the bitterness and hostility against England be in a perpetual majority as under the recommendations they are likely to be. For such a state of things will also mean utter hopelessness in their opponent. The constitution should be such that both parties will have a chance of being in power or being in effective opposition. If the idea of the member be accepted then he thinks it will be reasonably possible to prepare the country to accept the view that India's best interest lies in working for political evolution by co-operation with England. In order to achieve this object it will be a mistake to depend only on one group such as Muhammadans, or landlords or Liberals. He is of opinion that experience shows that personal jealousies have played an important part in the past and is likely to operate in future at any rate for the next 10 or 15 years (the one-sided anti-British propaganda has been going on for over 12 years in a very acute form and in a less acute form for over 25 years). The constitution therefore should be framed in such a way that a combination of a fair section of the Muhammadans, the landlords and the Liberals will give the party of co-operators at times a majority and at other times an effective minority. It will be necessary to leave more than a fair margin for defection because of personal jealousies. Such a constitution will inevitably strengthen the hands of the Governor and inspire confidence in the minds of the members of the security services than mere rules can ever do. The necessary safeguard will not be forthcoming by merely confining it to reserved powers of Governors and the maintenance of the security services. If we were to depend merely on these two safeguards and if the bitter agitation continues, as it will, then the present structure of the British Indian administration will have to be changed and it will be necessary to spend much larger sums on police and army than is done at the present moment. With decreasing income due to agitation and with increasing expenditure the safeguards suggested will prove useless and illusory. The member is of opinion that it would have sufficed if the principles suggested by him were accepted leaving it to the franchise committee to work out details. It was however pointed out to him that it would be desirable to give more definiteness to his ideas. He therefore puts forward certain suggestions with regard to the distribution of seats and the rules of franchise more by way of illustration than by way of definite recommendation. He is of opinion that the principles embodied in his note should be accepted and the illustrative suggestions put forward should be treated as nothing more than illustrative suggestions and that it should be left to the proposed franchise committee to work out the details after acceptance of the principles. The suggestions are:—

- (1) The period for constitutional revision by means of amendment by constitutional resolution should be extended to 15 years (instead of 10 years). This will ensure experience of 3 councils instead of 2.
- (2) During these 15 years the existing rules of franchise should stand. If, however, those who are weighed more by

theories than by realities insist upon broadening of the franchise such broadening should not be by more than double and not treble as suggested in paragraph 106 of the Simon Commission's Report.

- (3) Over and above the statutory nominations for Indian Christians, labour, etc., the Governor should have power to nominate up to 8 to 10 per cent. of the total number of seats. This will enable the Governor to introduce a stabilising influence whenever it is necessary to do so.
- (4) Of the total number of Muhammadan seats that may be decided, say 25 to 30 per cent. should be returned by a separate class of voters with higher property qualification, *e.g.*, those paying Rs. 10 as cess or Rs. 50 as land revenue or rent. The rest should be by the electors with the ordinary franchise qualification that may be decided. Unless this suggestion be accepted he is apprehensive that the class of Muhammadans who will be returned to the Legislative Council will have a less stabilising influence than those who now come by the door of election. If, however, the Muhammadan representatives do not like this suggestion the member feels that he should not press for it, but in that case he will have to ask for more non-Muhammadan seats for purposes of stabilising, leaving the percentage of communal representation intact. He would, however, point out that although personal differences and jealousies played an important part amongst all sections of co-operators, the part played by the Muhammadan section was very much worse. The number of co-operating Muhammadans who supported ministers was never more than one-third of the total number of co-operators of that community. In the case of the co-operating group of Hindus the supporters of the ministers was not less than two-thirds.
- (5) Of the total number of seats that may be allotted to the non-Muhammadans from general constituencies (excluding backward classes) say 25 to 30 per cent. should be reserved for constituencies with a higher franchise. As the non-Muhammadans generally speaking are better off than the Muhammadans he would make the property qualification higher, *e.g.*, payment of say Rs. 15 as cess or payment of Rs. 75 as land revenue or rent.
- (6)  $7\frac{1}{2}$  per cent. of the seats should be reserved for the special constituency of landholders. The present voting qualification should be reduced.
- (7) Of the backward classes he would not give any special representation to the Mahisyas and the Ugrakshatriyas. His reason for this suggestion is that they can well look after themselves and that it is politically inexpedient to grant special representation to these two classes. Some



special facilities are necessary for the Namasudras and Rajbansis. He agrees that the total number of backward classes' seats should be reduced to 10. He also agrees that it may be difficult to get many more suitable candidates from the backward classes.

- (8) The representation of Indian commerce and industry should be continued. In Bengal, however, the Bengali element in Indian commerce and industry is getting smaller and smaller. In the present Bengal Legislative Council with a total non-official number of 114, we have 4 seats reserved for Indian mercantile and trading interest, *viz.*, 2 for the Bengal National Chamber of Commerce, 1 for the Bengal Marwari Association and 1 for the Bengal Mahajan Sabha. He would retain these seats. If these seats are retained then on the percentage as recommended by the Simon Commission the total number of seats will be about 9 or 10. The remaining 5 or 6 seats he would allot to income-tax payers who are Indians by nationality and who pay an income-tax on an assessed income of say not less than twelve thousand rupees per annum. For political and other reasons he is opposed to increasing the numerical representation of Marwari trading interest. Increasing of seats to the Marwari trading interest will add to strengthening of the forces which tend to disruption of society. Further he does not see why extra consideration should be shown to those who are not natives of the province. On the other hand allocation of 5 or 6 seats to income-tax payers will introduce a stabilising influence. His reasons against extension of seats in favour of bodies representing trade and commerce both amongst Bengalis and Marwaris and suggesting an income-tax election are mainly political. Those who are in trade and commerce (both Bengalis and Marwaris) are becoming increasingly extremist and are for their own peculiar reasons becoming supporters of boycott. Income-tax payers will include a large number of householders who pay income-tax on their personal income and property. This class is more stable.

The member has no objection to automatically dropping the provisions embodied in paragraphs 3, 4 and 5 of his suggestions after a period of 15 years, leaving it open to the framers of the constitutional resolution either to re-introduce these provisions or to modify them in any way without the necessity of support by two-thirds of the voters of the legislature, but his object is that during the initial period of the working of the new constitution it is important to introduce more stabilising influences. He is, however, of opinion that it will be safer to retain the two-thirds rule even with regard to these provisions. From calculations that he has made he is of opinion that the distribution of seats and the rules of franchise on the lines framed by him will in all probability

ensure what he has in view, namely, that those who are willing to work for the ideal of responsible government as an integral part of the British Empire may be returned in such numbers that after allowing for defection on personal questions, at times they will be in a majority and at other times be an effective minority.

With regard to the provincial executive he desires to suggest the following. As soon as the Cabinet has been formed a Muhammadan member and a Hindu member should be placed jointly in charge of the departments of Police and Appointments. The procedure will be that where both members agree, subject to the reserved power of the Governor and of the over-ruling power of the Cabinet as a whole, the order will be final, but where the two members differ the matter will be placed before the Governor whose opinion will be final and there will be no overriding power of the Cabinet. If, however, the Cabinet decides upon placing either of these portfolios in charge of a British elected member, then the special provision suggested above need not apply.

(2) The ministers instead of being jointly responsible to the Lower House only should be ultimately responsible to a joint session of both the Houses as suggested by the memorandum of the Government of Bengal. This will ensure a better possibility of keeping in office ministers who may desire to work the constitution with the ideal of responsible government as an integral part of the British Empire.

(3) It has been pointed out that the difficulty of the exercise of the Governor's reserved power will not be so much with regard to their exercising when real emergency occurs, but the greater difficulty will be in day to day administration. Responsibility to the joint session of both the Houses will, therefore, meet some of the objections referred to in paragraph 6 of the letter to which this is appended.

(4) There is a serious danger of a majority in the Legislative Council refusing to work the constitution. If two ministries are successively defeated and no ministers are available with a majority for working the constitution the Governor should have not only the power of dissolving one or both the Houses, but he should have the power of suspending the Lower House for a limited period of say one year and carry on with ministers appointed from the Upper House for that period. The exercise of such a power, however, will be subject to the supervision of the Governor-General and within one year a fresh election will have to be held.

With regard to the Central Government the member is of opinion that if the scheme of the Simon Commission be adopted, both in the provinces and in the centre, then the position of the executive in the centre will be worse than intolerable. In the provinces the legislatures are likely to be dominated by anti-British members and the ministers in the provinces will either have to submit to their domination or the constitution will break down. In either case a situation will arise in the province which will inevitably lead to physical conflicts between the people and the authorities and the repercussions on the discharge of the responsibi-

lities of the central executive will be very serious. The structure of society as also of trade and commerce will be very seriously affected. The member is further of opinion that the suggestions contained in paragraph 27 of the letter consist more or less of general observations and the position of the executive Government in the centre, even if the suggestions of the majority be accepted, will also be impossible. The member, however, finds it difficult to make any constructive contribution on this point, so long as the scheme for distribution of seats and the rules of franchise in the provinces are not finally determined. There is, however, one constructive suggestion which he desires to put forward and which should come into operation in any view of the case. That constructive suggestion is that the administration of the Army should be separated from the administration of other departments and should be placed under the charge of a separate Executive Council. This Executive Council for administering the Army will have the Governor-General as its head, the Commander-in-chief as Vice-President of the Council, one or two civilian members appointed by the Secretary of State for India to represent imperial defence interests and one or two members to be selected on the recommendation of the Government of India. The separation of the army administration from administration of the civil departments will take away a good deal of suspicion from Indian nationalists who desire to provide immediate responsibility in the Central Government.

Anti-British propaganda has been going on in India from the days of the Mahratta revival and of the partition agitation in Bengal. From the days of the agitation over the Rowlatt Bill and the Jalianwalla Bag incident, such propaganda has been very vigorous and virulent. There has been very little of counter-propaganda. Elections on a franchise very much wider than those in vogue under Morley-Minto scheme had one inevitable result, *viz.*, appeal to the racial issue with the help of the youth of the country. This helped a good many candidates to win their election. This also led to widespread anti-British feeling. The Indian-owned newspapers, whether edited in English or in vernacular, by Hindus or Muhammadans, added considerably to this anti-British feeling. Appeal to Indians on the sentiment of India for Indians must prove effective. Sentiment always plays an important part in politics and a sentiment like this it will be difficult to ignore. The counter-appeal to reason about co-operation with the British divorced from sentiment and lacking in the support of the youth of the country was always ineffective. During the last 10 years racial bitterness has increased with an intensity unknown previously. If the franchise be further broadened this member is definitely of opinion that racial bitterness will increase even more largely in volume and strength. One favourite game of those who believe in creating this racial cleavage is boycott of British goods. In an earlier part of this note the member has pointed out some of the dangers resulting from this movement. He desires to draw particular attention to this danger. He also considers it necessary to point out that the constitution of a country like India racially different from England must be framed after

taking due note of the racial difference and a blind copy of what is satisfactory in self-governing dominions like Australia, Canada or South Africa or what is satisfactory in England will lead to untoward results. In these countries there is no racial or communal issue in elections. Further the colonies are sparsely populated and want development. The position with regard to election there is very different from that in India.

Under the Morley-Minto constitution there were altogether about 8,000 voters in Bengal. Out of these 6,000 were direct voters and 2,000 represented electoral colleges. Under the present Government of India Act there are over 11 lakhs of voters. In elections which took place under the Morley-Minto constitution persons who based their politics on reason as against mere sentiment could successfully contest the seats. So far as the Hindus are concerned, under the existing constitution in the general constituencies less than 10 per cent. were successful in the last elections. The position was better with regard to the seats reserved for the landholders and trade and commerce. The reason for this want of success in general constituencies was appeal to sentiment and the efforts of the youthful supporters of extremism. If the franchise be extended in the manner proposed and if the landholders' constituency be abolished, then so far as the Hindus are concerned, co-operators will have absolutely no chance. Those who think that with the help of the Muhammadans and of the Europeans the constitution can be successfully run, labour, in his opinion, under a great mistake. In the first place, assuming that the constitution can be run in the manner indicated, there will be a sense of helplessness and hopelessness in the Hindu community. This must have its repercussions in many directions. It will inevitably lead to physical conflicts. It will mean ruin of trade and commerce. It will also mean increasing poverty to the Muhammadans who are already poor. I do not think, however, that the assumption is right that the Muhammadans who would be returned to the Legislative Council on an extended franchise will not be anti-British. It is true that the Muhammadan advisers of Government have supported extension of franchise amongst Muhammadans. If analysed, their reason for such support is that they are anxious to secure thereby a larger number of seats for Muhammadans. There are already the beginnings of a movement, not very serious at the present moment, amongst the younger section of the Muhammadans which are anti-British and decidedly antagonistic to the opinion of the older and soberer section of Muhammadans. With extension of franchise young pleaders, journalists and men with very little stake amongst the Muhammadan community will have a much better chance of being returned, particularly as they are likely to be supplied with funds by the Congress workers and others. It will then be a question as to which section can harness the Maulavis and Mollahs and the young men on their side. This member is almost certain that older and the soberer Muhammadans will have a very difficult time, and to some extent the experience through which the soberer and older sections of the Hindus went a few years ago will be repeated in the

case of the Muhammadans. Assuming, however, that the older and the soberer Muhammadans will be able to be returned in fairly large numbers the inevitable personal issues will be there and for practical purposes their return will be of little use for smooth running of the constitution. Furthermore, statesmanship demands that the supporters of ministers should be recruited from the two communities and not from one community only. Apart from propaganda for elections where the older and the soberer Muhammadans have been fairly successful against pro-Congress Muhammadans, the attitude of the Muhammadan community in Bengal on the question of boycott of British goods as apart from the civil disobedience movement has been on the whole almost as unsatisfactory as that of the Hindus. The cigarette trade has been largely in the hands of the Muhammadans. We know the position with regard to the cigarette trade. Cigarettes has been boycotted both by Hindus and Muhammadans. A quiet enquiry into the bazar will satisfy any one that the Muhammadan traders have as much sympathy with the boycott as the Hindu traders, although both the Hindu and the Muhammadan traders suffer from boycott. It is true that in the civil disobedience movement, at any rate in Bengal, a section of the Muhammadans have passed resolutions against the movement, but beyond passing of resolutions they, in most cases, have done very little effective, but wherever anything effective was attempted it has inevitably led to physical conflicts between Hindus and Muhammadans and to the undesirable economic issue, thereby adding to the difficulties of the administrative officers, already harassed by the civil disobedience movement.

If we look to the political history of England where responsible Government has perhaps succeeded better than even in most western countries we find that there has been a gradual evolution in extension of franchise and power to the less favoured sections of the community. Before the Reforms Act of 1832 power was practically centered in the aristocracy and squirearchy. After 1832 the upper middle class men were taken in and power was centered in a combination of the older element and of the upper middle classes. After Lord Disraeli's Act there was a further extension. Skipping over the intermediate constitution at legislation we find that even after the Act of 1918, £10 annual value is the qualifying franchise for males, whereas in India in the case of a tenure-holder Rs. 16 annual rent is the qualifying franchise. If England with all its experience of responsible government, with all its advantages in education particularly after the compulsory Education Act passed 50 years ago, still retains £10 annual value as the qualifying franchise for the male voters, it will be a great mistake to lower the franchise even more than what it is under the present Government of India Act. The member, however, is fully alive to the demand for lowering of the franchise. The demand is based on a pathetic faith of blindly copying of western institutions. If the authorities were to accept the demand put forward by the nationalists, then why accept it in one respect and reject it in others? For example, responsibility in the centre is the demand of the Hindus and the Muhammadans alike. If all the demands

are not accepted it is because of reasons of safety, and if reasons of safety operate, as it should, then let it operate with due regard to all realities.

There is one important question which must have great weight with the security services and contentment of the security services is so important in maintaining stability in the structure of society. The representatives of the services are very keen on retaining an official minister. After giving the matter very anxious consideration the member is of opinion that such retention will merely add fuel to the fire and will not be of any use. There may be one way of gaining the object which the representatives of the security services have in view. If it be provided that European trade and commerce should be allowed to elect members who do not belong either to the Chamber of Commerce or the Trades Association but who are British by nationality, then it will be quite possible for these interests to elect one or more officials who have just retired on pension and as European trade and commerce will represent an important section of the House the inclusion of a retired official to the electorate may serve the purpose which the representatives of the security services have in view. The member commends this suggestion to the careful consideration of these representatives. This suggestion if accepted will not have the same political objection as the inclusion of an official minister as such. Failing this the member suggests that the salary and the emolument of the Chief Secretary should be improved and he should be the official adviser of the Governor.

There are a number of other points into which the member refrains from entering as he is of opinion that unless a decision on some of the points on which he has laid great stress in this not be arrived at, it will not serve any useful purpose to deal with those points.

In this note he refrains from stating his views about the communal question and the all-important question of provincial finance. He proposes to deal with these two topics separately.

## APPENDIX B.

*Note by the Muhammadan members of Government, dated 15th July 1930, on Moslem representation in the Bengal Legislative Council in proportion to ratio of population.*

On page 71 of volume II of the Report, the Commission have referred to the Lucknow Pact. They say, "Our own opinion is that in view of the existing position and of the weakness of the Moslem minority in six out of the eight provinces the present scale of weightage in favour of Muhammadans in those provinces might properly be retained ..... But a claim has been put forward for a guarantee of Muhammadan representation which goes further than this. This claim goes to the length of seeking to preserve the full security for representation now provided for Moslems in these six provinces and at the same time to enlarge in

Bengal and in the Punjab the present proportion of seats secured to the community by separate electorates to figures proportionate to their ratio of population..... We cannot go so far. The continuance of the present scale of weightage in the six provinces would not, in the absence of a new general agreement between the communities, equitably be combined with so great a departure from the existing allocation in Bengal and the Punjab ”.

We are afraid this reasoning will not bear scrutiny for a moment for—

- (a) In the first place their argument militates against their fundamental ideal of a Federal Government. The conception of Federal States presupposes the inter-independence of the constituent states and therefore the plea of weightage elsewhere does not apply to Bengal and the Punjab. In all federal systems of Government, where there is a question of majorities and minorities, certain amount of weightage is always given to the minorities where they exist. But this weightage is never allowed to operate in reducing any actual majority anywhere into a minority.

The Commission further observes that “ it would be unfair that Muhammadans should retain the very considerable weightage they now enjoy in the six provinces and that there should at the same time be imposed a definite Moslem majority in the Punjab and Bengal ”.

The Commission seems to forget that the weightage which Moslems enjoy in those six provinces is due to the very essence of democracy. “ It is an essential part of democracy ”, says John Stuart Mill, “ that minorities should be adequately represented; nothing but a false show of democracy is possible without it ”. Thus the weightage in the other provinces can never be taken to counter-balance any actualities elsewhere. There is no question of “ imposing ” a definite majority in the Punjab and Bengal. The definite majority is there already. On the other hand, it is the Commission who are attempting to reduce an actual majority into a perpetual minority, which is against all principles of democratic form of government.

Even the late Mr. C. R. Das in the now famous Bengal Pact, agreed to give major community 60 per cent. representation and minor community 40 per cent. representation on all self-governing bodies in each district of Bengal, irrespective of Hindu or Moslem and their actual census strength.

- (b) The Commission talk of a “ new general agreement between the communities ”, and it seems that if such an agreement were concluded and it gave representation according to population to the Moslems in Bengal and the Punjab, the Commission would then be glad to ratify

the same, forgetting perhaps that such an agreement between the two communities is never likely to materialise. Their two trips to India ought to have convinced them that the Hindu community would never concede such representation to Bengal and the Punjab Moslems *suo motu*.

Representation of Bengal and Punjab Moslems in proportion to their population seemed to the Commission to be a "great departure from the existing allocation", whereas in reality it is nothing of the kind. It is a claim based on equity, as we shall presently show.

- (c) Let us trace the history of Moslem representation as will be found from Government of India's Memorandum on "Communal representation in legislatures and local bodies. (E.-Ind.-209)". This Memorandum from which we are quoting below was prepared by the Government of India for the Simon Commission.

The question of Moslem representation was first mooted during the viceroyalty of Lord Minto. A deputation of leading Moslems headed by His Highness the Aga Khan waited upon His Excellency Lord Minto on the 1st of October 1906 and presented an address. In his reply His Excellency Lord Minto declared as follows:—

(Ref. E.-Ind.-209, page 11.) "The pith of your address, as I understand it, is a claim that under any system of representation, whether it affects a municipality or a district board or a legislative council, in which it is proposed to introduce or increase an electoral organisation, the Moslem community should be represented as a community. You point out that in many cases electoral bodies as now constituted cannot be expected to return a Moslem candidate, and that if by chance they did so, it could only be at the sacrifice of such a candidate's views to those of a majority opposed to his community whom he would in no way represent; and you justly claim that your position should be estimated *not only on your numerical strength but in respect to the political importance of your community and the service it has rendered to the Empire. I am entirely in accord with you.* Please do not misunderstand me. I make no attempt to indicate by what means the representation of communities can be obtained, but I am as firmly convinced as I believe you to be that any electoral representation in India would be doomed to mischievous failure which aimed at granting a personal enfranchisement *regardless of the beliefs and traditions of the communities composing the population of this continent.*"

(Ref. E.-Ind.-209, page 12.) "These proposals were supported by the Government of India and communicated to the Secretary of State, who accepted the principle that the Moslem community was entitled to a special representa-



tion on the Governor-General's and local legislative councils commensurate with its numbers and political and historical importance."

This shows that the Government of India declared that the Moslem community were entitled to special representation on the local legislative councils, but that representation was to be commensurate with *not only its number but also its political and historical importance*. Simon Commission now declines to give them representation commensurate even with their numbers, not to speak of their political and historical importance.

The Government of India Memorandum further goes on to say that "These proposals were supported by the Government of India and communicated to the Secretary of State, who accepted the principle that the Moslem community was entitled to a special representation on the Governor-General's and local legislative councils, *commensurate with its numbers and political and historical importance*".

The Lucknow Pact agreed to the following proportion of Moslem representation in the legislative councils:—

Punjab—50 per cent. of the elected Indian members.

United Provinces—30 per cent. ditto.

Bengal—40 per cent. ditto.

Bihar and Orissa—25 per cent. ditto.

Central Provinces—15 per cent. ditto.

Madras—15 per cent. ditto.

Bombay—33½ per cent. ditto.

The percentage of Moslem seats to the Moslem population, taking figures from the census of 1911, worked out as follows:—

Province.	Moslem Percentage		
	percentage of Moslem of population.	Percentage of Moslem seats proposed.	Percentage (2) of (1).
	1	2	3
Bengal . . . . .	52.6	40	76
Bihar and Orissa . . . . .	10.5	25	238
Bombay . . . . .	20.4	33.3	163
Central Provinces . . . . .	4.3	15	349
Madras . . . . .	6.5	15	231
Punjab . . . . .	54.8	50	91
United Provinces . . . . .	14.0	50	214

The result is (*vide* E.-Ind., page 21) "that while Bengal Moslems have obtained only three-quarters and the Punjab nine-tenths of what they would receive upon population basis, the Moslems of other provinces

received extremely liberal representation. These concessions indicate the extent to which Congress leaders were prepared to go in order to secure the adherence of Moslems to their reforms proposals”.

(*Ref. E.-Ind.-209, page 28.*) “The Government of India drew attention to the effect of the Congress League agreement (Lucknow Pact) in giving the Bengal and Punjab Moslems less than what they would receive upon a population basis, while the Moslems of other provinces received, some of them, extravagantly good terms. The Government of India were of opinion that the proportions laid down in the Lucknow Pact could not be taken to represent the right relation either between Moslems in different provinces or between Moslems and the rest of the communities..... The Government of India accepted the conclusions of the Committee in favour of the proportions agreed upon in the Lucknow Pact with *one exception*. The Government of India felt that the Moslem representation *proposed for Bengal was manifestly insufficient*; they doubted whether the *claims of the Moslem population of Eastern Bengal had been adequately* pressed when the Congress and the League compact was in the making.”

We have thus shown above what the views of the Government of India were, at the time when the Franchise Committee perpetrated a great injustice on the Bengal and Punjab Moslems.

Now is this injustice going to be perpetuated? The entire Moslem community from the Himalayas to Cape Comorin feel very strongly on this point as will be evident from the resolution of the All-India Moslem Conference held at Delhi on the 1st January 1929 where it states (*vide* page 85 of Report): “It is essential that representation of Mussalmans in the various legislatures and other statutory self-governing bodies should be based on a plan whereby the Moslem majority in those provinces where Mussalmans constitute a majority of population shall in no way be affected and in the provinces in which Mussalmans constitute a minority, they shall have a representation in no case less than that enjoyed by them under the existing law.”

The resolution passed by the Working Committee of the All-Parties Moslem Conference held at Simla on the 5th July last also emphasized the Moslem demand for representation in Bengal and the Punjab Council on the basis of population. All Moslem leaders who have criticised the Simon Report have equally stressed this point.

Now with regard to the manner and form of the Moslem electorates of 1909 three points that deserve to be borne in mind are—

(1) that the Moslem electorates were super-imposed upon the general electorates;

- (2) that not only the basis of population, but also the political importance of the Moslem community, as distinct from its numerical strength, was accepted by Lord Morley as a basis for special representation; and
- (3) that the franchise in the Moslem constituencies, which elected direct to the councils, was wholly different from the franchise qualifications in the general constituencies in which the district boards and municipalities intervened between the primary voters and their representatives in the council.

Later on, at the time of the Montford Reforms, when the Franchise Committee based their recommendations on the Lucknow Pact, the Government of India strongly protested as has been described. In spite, however, of the Government of India's protest, effect was given to the Lucknow Pact during the last Montford Reforms, the result of which in Bengal was even more disastrous. The present council is composed as follows—

- (a) 39 are returned from Moslem constituencies.
- (b) 46 are returned from Hindu constituencies.
- (c) 5 are returned from the Landholders' constituencies.
- (d) 2 are returned from two Universities' constituencies.
- (e) 4 are returned from Bengal National Chamber of Commerce, the Marwari Association and the Bengal Mahajan Sabha.
- (f) 16 non-official Europeans.
- (g) 2 Anglo-Indians.
- (h) 26 nominated officials.

---

140

---

This means that whereas there are 39 Moslems, there are  $46 + 5 + 2 + 4$ , i.e., 57 Hindus, as Moslems can never hope to get returned from the Landholders' constituencies, nor from the Bengal National Chamber of Commerce, the Marwari Association and the Mahajan Sabha, nor more than one from the two Universities. Thus, in a Council of 140, as at present constituted, there must always be 39, or at the most 40, Moslems, against 56 to 57 Hindus.

Some objection seems to have been raised against the Commission's recommendation of giving the depressed classes something like 18 per cent. representation; and this is sought to be lowered. There seems to be little justifications in this objection, as will be gleaned from the fact that, taking the census of 1921, the caste Hindus, i.e., (a) Brahmin, (b) Kayastha, (c) Baidya, (d) Rajput, (e) Buddhist and Jain, taken together, come to 3,105,000 roughly, whereas the depressed classes and untouchables come to 17,400,000.

Even if the 18 per cent. as recommended by the Simon Commission is lowered, and a smaller proportion of seats assigned to the depressed classes, that is no argument against Moslem representation as the Moslem population is 25,200,000. Besides, although the lower strata of the Hindu society is labelled as depressed and untouchable, they still come in under the nomenclature of Hindu and within the pale of Hinduism and have common interests with them.

Both the Congress and the Moslem League have always affirmed the principle, which has been enunciated by both these bodies, that "under no circumstances should a majority be reduced to a minority, and there should not be a violation of this principle".

"The annulment of the Partition of Bengal and the unsettling of that settled fact on the 12th December 1911 had shaken the faith of the Moslems in the pledges and promises of British statesmen. The dubious attitude and policy of England during the Turko-Italian and Balkan Wars had also distracted and disturbed the Moslem mind. This drove the younger men of the Moslem League into the arms of the Congress, and resolutions passed by the League in 1913 bear unmistakable traces of Congress influence. Then came the Great War, in which Turkey was ranged on the side of the enemies of the Empire, and this sorely tried and strained the loyalty of the Moslems. Advantage was taken of this by Mr. Gandhi, who subsequently developed it into what he styled as the 'Khilafat wrong,' and some Moslems were led to accept the Pact: but in reality the Lucknow Pact gave the Moslems nothing substantial. By a clever gesture of peace and good-will, the Congress politicians succeeded in securing the acquiescence of a handful of young and inexperienced politicians of the Moslem League to the relegation of Moslems to the position of a minority in every province in India, including the provinces of Bengal and Punjab, where they constituted a majority. Disillusionment followed soon, and the Moslems of Bengal and Punjab bitterly rue the Pact to this day."

When finally the Government of India had to act in accordance with the findings of the Franchise Committee, Sir William Vincent appended a Note to the Fifth Despatch of the Government of India, dated the 23rd April 1919. This is what he wrote:—

"What is wanted is a sliding scale in which the weighting given to Muhammadans increases as their numerical weakness does. We have, as the despatch says, to measure the advantage to be given to them. To do so some arbitrary assumptions must obviously be made. The fewer and simpler these are, the better. Where the Muhammadans are in a census majority, let them get representation in that proportion. Where they are at their weakest let us double that proportion. Between these extremes let us multiply the census ratio of Muhammadans by a factor greater than 1 and less than 2"

and he proceeded to state his final proposals as follows:—

	Population percentage.	Proposed percentage of seats.
" Punjab . . . . .	54.8	56
Bengal . . . . .	52.6	53
Bombay . . . . .	20.4	28
United Provinces . . . . .	14	24
Bihar and Orissa . . . . .	10.5	20
Madras . . . . .	6.5	12
Central Provinces . . . . .	4.3	9

(N.B.—The figures above were calculated from the Census figures of 1911.)"

In an enlarged council, say, of 200 to 280, *i.e.*, double the present number, Hindu electorates including the special electorates are likely to be captured by Extremists. The only combination opposed to them will be a combination of Moslems and Europeans and a few perhaps also from the depressed classes. Hitherto, the refined and cultured Moslems of the old school, or those who have a stake in the country, have been largely conspicuous by their absence from the council, and a large number of those Moslems that get elected, come from classes whose adherence to this or that party is likely to remain venal. This is also a factor which ought to be taken into consideration. Therefore, Moslem representation must be fixed on the population basis, for if out of the 55 per cent. some are gained over by Extremists, a sufficient number will still be left over in combination with Europeans and a few depressed class members to oppose effectively the Extremists that will be there.

In February 1926, the Muhammadans in the Legislative Council carried a resolution "recommending re-adjustment of seats in the council so as to provide that representation in the council should be proportionate to the numerical strength of different communities in the province with just and proper representation of minorities and commercial interests". Furthermore the Government of Bengal in their Memorandum for the Simon Commission stated that "A majority of the members of Government are of opinion that the representation of the Muhammadan and non-Muhammadan elements on the legislative council through the general constituencies should be proportionate to their numbers in the population, that is, that on the basis of the 1921 census, the Muhammadans should have about 55 and the non-Muhammadans about 45 per cent. of the members representing the general constituencies".

Further, the Simon Commission have recommended the lowering of the franchise. If the one-rupee union rate is adopted, the Muhammadan vote will increase from 513,000 to more than 1,121,000; and the Hindu vote from about 540,000 to 900,000; and it will be seen that Muhammadan representation of 55 per cent. and Hindu representation of 45 per cent. will be roughly the approximate ratio of the number of voters to the number of representatives.

Finally, it should be noted that the Lucknow Pact was entered into before the historic declaration of 1917. It was then contemplated that the proportion of representatives of the two important communities as agreed to, would only remain in a system of government conducted with local councils, more or less as an advisory body, where the executive would retain sufficient power to redress any wrongs on either side wherever they occurred. At the present moment, however, the constitution visualised is a great advance. In fact, it is intended to introduce self-government almost to the fullest extent and the legislature will not be of the same complexion but will have complete control over the executive. Such being the case the Lucknow Pact *ipso facto* becomes obsolete and should on no account have been taken as a basis for fixing the ratio of representation in a constitution of the kind proposed; nor should it be left within the ambit of Parliament to reduce an actual majority, wherever found in any of the constituent states of the federal system, into a minority by an Act of Parliament.

---

No. 222-A. C., dated Calcutta, the 22nd August 1930.

From—W. S. HOPKINS, Esq., C.I.E., O.B.E., I.C.S., Chief Secretary to the Government of Bengal, Appointment Department, Reforms,

To—The Secretary to the Government of India, Reforms Office.

With reference to last paragraph of Appendix A to my letter No. 219-A. C., dated the 15th August 1930, on the above subject, I am directed to submit herewith a note, dated the 16th August 1930, on communal representation by a Hindu member of Government.

*Note dated the 16th August 1930, on communal representation by a Hindu member of Government.*

The Hindu members of Government were opposed to the continuance of communal representation. They did not think it necessary to enter into any general discussion affecting the question, because the arguments for and against such representation were so well-known. They, however, desired to include in their memorandum certain special points apart from the well-known general points. They further wanted to examine the question particularly from the point of view of the problem affecting this province. Before the memorandum was finally prepared one of the Hindu members of Government unfortunately tendered his resignation. It was not possible, therefore to complete the whole memorandum as one submitted jointly by the Hindu members. Both the Hindu members however were opposed to the continuance of communal repre-

sentation. The remaining portion of the memorandum, therefore, represents the opinion of the only Hindu member who is left in the Government.

This member is of opinion that communal representation has prevented a sense of common citizenship growing up. It has perpetuated cleavage between the two communities and such cleavage has, in the opinion of the member, resulted in physical conflicts and creation of disruptive forces, dangerous to the structure of society. It has at times resulted in such tense feeling between the two communities as to affect the normal life of the people. Within recent years there were communal conflicts on a large scale in Calcutta, Kulkati in Barisal, Madaripur in Faridpur, extending to portions of the eastern tracts of the district of Barisal, in Pabna, twice in Dacca and at Kishorganj in the district of Mymensingh. On each of these occasions the communal feeling became bitter and intense. In the opinion of the member it is neither necessary, nor relevant, for a proper consideration of the question at issue, to apportion the blame between the two communities. The only relevant point is the existence of the bitter feeling. In Dacca on both occasions the Hindus charged the Muhammadans with unprovoked assaults and the Muhammadans reciprocated the charge. Many members of both the communities believed in these charges and counter charges. There was considerable loss of life and property and the position of the authorities whose duty it was to maintain peace became acutely difficult. In Dacca the Muhammadans complained that the Hindus refused to employ Muhammadan masons and hackney carriage drivers. When the Hindu peace-makers approached the members of their community on this point they were met with the reply that the Muhammadan masons and hackney carriage drivers were responsible for loss of life and property of the Hindus and so they did not want to employ them. At Kishorganj a whole countryside was reduced to a state of panic, considerable property was looted and a number of persons were brutally murdered. It has been suggested by the Muhammadans that a good deal of this lawlessness was due to the fact that money-lenders and the wealthier men mostly came from the Hindu community, the debtors and the poorer men from the Muhammadan community. It was further suggested that the origin of the trouble was

economic and not communal. Whatever the origin might have been the actual result is well-known. It is clear that these communal conflicts seriously affect the economic side of life of the general citizen.

During the Calcutta riots this member along with a number of Hindus and Muhammadans tried to form a peace committee to relieve the communal tension. His experience of the efforts of the Calcutta peace committee convinced him that influential members of both communities who had political ambition and desired to stand for election either from Hindu or Muhammadan seats were very reluctant to take a helpful attitude. They were afraid of their chances of success in the next election, whether for some seat in the Calcutta Corporation or in the Legislative Council. He is convinced that if the important citizens of both the communities knew that in the next election it would be necessary for them to approach the voters of both the communities, then they would have tried their utmost to relieve the communal tension and approach the questions before them from a very different spirit.

Five years ago communal feeling in Bengal on the Hindu side, at any rate, was negligible. The leading men amongst the Hindus, who were Bengalis by birth, had very little of communal feeling against the Muhammadans. When the Hindu Sabha and the Sangathan movement was started in other parts of India it made very little impression on Bengalis by birth. The Bengalis by birth were so averse to taking up this movement that the Hindu Sabha had to look to a Marwari or upcountry gentleman, Bābu Padmaraj Jain, to be the Secretary. The sympathisers of the movement were mainly confined to the Marwaris and other orthodox upcountry men who settled in Bengal. Hindu orthodoxy in the sense as it obtains in other parts of India is a rapidly diminishing factor in Bengal. For that and other reasons the Bengalis did not sympathise with the Hindu Sabha or the Sangathan movement. An examination of the activities of the Hindu Sabha movement and of the personnel of the committee of that Sabha will show that there were very few well-known Bengali Hindus interested in it. The physical conflicts and the resulting lawlessness of the Calcutta riots created a change for the worse in communal feeling amongst the Bengali Hindus. The Pabna riots made the position worse, and



the Dacca and the Kishorganj affairs have accentuated that feeling. Even at the present moment, in spite of these disturbing factors, communal feeling is not as bad as it is represented to be. The best incentive to recruitment to the Hindu communal camp is these riots and the physical conflicts. In the opinion of the member one important factor which is increasing the bitterness between the two communities in Bengal is the creation of public opinion on communal lines. This in his opinion is the direct result of separate electorates. The attitude taken or supposed to have been taken by a number of high police officials, particularly in the districts, have created a feeling amongst a considerable section of the Hindu community that these officials are pro-Muhammadan and anti-Hindu. This state of feeling may be unfortunate, but it exists. As the struggle for power in opposite communal camps will increase the position of the British officials is likely to become more and more difficult. This, in the opinion of the member, is an additional reason for abolishing separate communal electorates.

In the opinion of this member the great danger before the country to-day is the increase of disruptive forces of society so as to affect the economic life of the people. Maintenance of law and order to ensure liberty of action may be difficult, but not a tenth as difficult as taking adequate steps to minimise forces so insidiously affecting the economic life of the people. In his opinion communal representation is a source of great danger with regard to the last mentioned point. The greater the rivalry between the leading men of the two communities for division of political power the greater the danger to the economic structure of the society if communal representation be perpetuated.

One Muhammadan objection against joint electoral bodies was that such bodies would elect only those Muhammadans who are sympathetic to the Hindus. There may be a good deal of substance in this objection in provinces like the Central Provinces where the Muhammadan percentage\* was only 4.1, Madras where that percentage was only 6.6, in Bihar and Orissa where the percentage was only 10.6, in the United Provinces.

---

\* The figures for the percentages are taken from the Census of India of 1911.

where the percentage was 14, and in Bombay where the percentage was 20.4. But in Bengal and in the Punjab, where the percentage was 52.7 and 54.8 respectively, there is no force in this contention. On the other hand, the Hindu community might well apprehend that in these two provinces only Hindus sympathetic to the Muhammadans would be elected. The Simon Report at the bottom of page 71 of Volume II has hinted at introduction of joint electorates for Bengal and the Punjab. The member desires to draw attention to it.

Then again in Bengal the Muhammadan population being large, electioneering education of such population on communal lines has increased and will increase still further the cleavage which will lead to physical conflicts on a much larger scale than in the other six provinces where the percentage is small.

The district board elections in Bengal, particularly in Eastern Bengal, demonstrate the fact that the Muhammadans do not run any risk of returning pro-Hindu members of their community. These elections further prove that in spite of the supposed superior wealth and position of the Hindus, Muhammadans are returned in such large numbers as to form a majority.

If the system of joint electorate be adopted in Bengal then the Hindus run a serious risk of the elections being dominated by the Muhammadan majority, but in the wider interest of creating a sense of common citizenship the Hindus are willing to take this risk. They are by no means blind to the fact that in the first few elections they are likely to suffer materially. If joint electorates be accepted for Bengal then it will be necessary for the Franchise Committee to examine the question of allocation and reservation of seats for both the communities.

Assuming that communal electorate will be perpetuated in Bengal it will be necessary to determine the principle which will govern the numerical strength of the elected members of the two communities. In the opinion of the member, the Simon Report has given as favourable a decision as possible to the Muhammadan community in Bengal. Neither the Muhammadan members of the Government of Bengal nor the British members have given any cogent and satisfactory reasons for deviating from the decision of the Simon Report. He would point out that the majority

community has no right to ask for separate electorate. It ought to be against all fundamental ideas of justice that if in the 6 out of the 8 provinces weightage be given to the Muhammadan community, if in these 6 provinces their representation be not on the population basis, then their representation in the two provinces where they are in a majority should also be on a population basis. It is not fair to claim the advantages both ways and to disregard the disadvantages. The member is constrained to remark that the attitude of the British members of the Government in this respect is incompatible with their claim to hold the balance between the two communities evenly. One British member of the Government, when submitting the memorandum of this Government before the Simon Commission, dissented from the proposition that the representation of the Muhammadans should be on the basis of their population ratio. What induced that member to change his opinion has not been made clear.

Communal representation was first introduced when the Morley-Minto scheme was under discussion. The introduction of communal representation at that time was an act of the British authorities. The sixth point mentioned in justification for communal representation was that "with joint electoral bodies only Muhammadans sympathetic to the Hindus would ever be elected". (Simon Report, vol. I, page 184.) It has already been pointed out that this point cannot have any application to Bengal. Lord Minto no doubt accepted the arguments of the Muhammadans. He was then dealing primarily with the all-India aspect of the problem. Further, under the Morley-Minto scheme there was no question of wide electorates or representation on the basis of population. The decision which followed the inauguration of the Morley-Minto scheme gave a representation which was actually very much less than what should be on the population basis. The separate representation obtained by the Muhammadans in the Imperial Council was only 5 seats, 1 for each of the three Presidencies, 1 for the United Provinces and 1 for Bihar and Orissa. In the provincial Councils, Madras and Assam were to have 2 Muhammadan members, Bombay, Bihar and Orissa and the United Provinces 4 each, and Bengal 5 only out of a House of 50 containing 27 elected representatives. In the Punjab special protection was not considered necessary. Under the Montagu-Chelmsford scheme the Muhammadans gained a great

advantage, but such advantage was not based on the decision of the British authorities, nor was it based on an examination of the justice of the case. It was based on a compromise arrived at between the two communities by what is known as the Lucknow Pact. That pact no longer exists. One of the communities has expressed in no unequivocal terms that there should be no communal representation. The question, therefore, has to be examined on its own merits. If the question be examined on its own merits it is necessary to take into consideration not only the population and the voting strength but also the contribution of each community to the taxes of the provincial and of the central Governments. A question like that can only be conveniently examined by a special committee. The member desires to suggest that such a committee should be set up. The committee should consist of an equal number of Hindus and Muhammadans with some public men from England. The public men should be selected from persons who have an open mind. The member desires to express the opinion that if in Bengal the question be considered by an impartial committee from the points of view mentioned by him, then it is extremely likely that the number of seats to be separately reserved by communal electorate to the Muhammadans will not be more than 30 per cent. of the total number of the elected seats.

He desires further to submit that as the basis of the compromise embodied in the Lucknow Pact is no longer in operation, the number of Muhammadans in the Central Legislature should depend not only on the population basis for the whole of India but on the voting strength and the rating strength of the members of such community. Once the total number of the seats to be reserved for the Muhammadan community in the Central Legislature has been fixed, then it should be left in the first instance to the members of that community in the different provinces to allocate the number of seats in the Central Assembly as also in the provinces. After the members of that community in the different provinces have agreed to do so, then the Hindu community should be heard on that point and a final decision should be arrived at.

The member also desires to refer to the previous memoranda submitted by him on the subject when this question was discussed by the Government of Bengal in connection with their memorandum to the Simon Commission.

No. 921-A. D., dated Darjeeling, the 15th September 1930.

From—W. S. HOPKINS, Esq., C.I.E., O.B.E., I.C.S., Chief Secretary to the Government of Bengal, Appointment Department, Reforms,

To—The Secretary to the Government of India, Reforms Office.

In continuation of letter No. 219-A. C., dated the 15th August 1930, I am directed to communicate for the information of the Government of India the observations and conclusions of the Government of Bengal on the financial proposals of the Indian Statutory Commission.

2. The foundation of these proposals is an attempt to apply certain general principles to Central and Provincial finances so as to secure a uniform basis for the provincial settlements. The alternative to this would be settlement with each of the provinces on the basis of needs. This would entail a detailed and laborious investigation by an expert and independent committee such as was proposed to be undertaken in 1919 and it is at least doubtful if its results would be any more satisfactory to all parties than those of the scheme propounded by the Commission. This Presidency having been very adversely affected by the last financial arrangements, the Government of Bengal feel that they have strong grounds for pressing for at least a preliminary adjustment, so that they may enter upon the new régime unburdened by the effects of their financial disabilities during the last ten years. They recognize, however, that Bengal is not peculiar in this respect, that some of the other provinces would have claims to similar treatment and that all these would be difficult to assess and adjust. But whether any attempt in this direction is made or not, they consider it of paramount importance for the success of the new constitution that Bengal at all events should start with fresh and increased resources. While therefore, without prejudice to any possible preliminary adjustment, they accept the suggested uniform settlement in preference to one on the basis of needs, they desire to emphasise the necessity of the Government of India organising their finances in the immediate future in such a way that the provincial Governments may obtain a substantial share of the revenues, which it is proposed to transfer to them, from the very inception of the new constitution.

It is emphasised by both the Commission and Sir W. Layton that their financial scheme is intimately bound up with the federal nature of their general constitutional pro-

posals and particularly with their recommendation for indirect election to the Central Legislature. The Government of Bengal recognize that a federal constitution increases the desirability of a uniform basis for the financial arrangements between the Federal Government and its constituent parts, but they are not equally satisfied that, to quote Sir W. Layton, the "endeavour to ensure that responsibility for imposing additional taxation is definitely laid on those who will have to incur additional expenditure" necessarily involves a scheme of indirect representation in the Central Legislature. In fact this would only seem to follow if it be assumed—and the assumption is by no means self-evident—that the provincial representatives in the Central Assembly would necessarily vote upon instructions received from the Provincial Finance Minister with whom under the proposals the initiation of additional taxation would rest.

3. The main assumption on which the Commission's proposals rest is that, while the expenditure of the Central Government ought to remain more or less stationary, their revenues will progressively increase, thus enabling them to release more and more funds for the benefit of the Provinces. The Government of Bengal are unaware of the facts on which Sir W. Layton based his calculations and have not the material on which to frame any informed criticism, but it seems to them that his figures are very much more optimistic than even he admits, being based on assumptions of rapid recovery from worldwide economic depression, absence of internal and external disturbing factors, and the willingness of the Imperial Government to assume part of the liability for military expenditure. In view of the extremely hypothetical nature of these assumptions, the Government of Bengal consider it most doubtful whether it will be at all possible to frame such a timetable as Sir W. Layton contemplates for the release to the Provinces of sources of Central Revenues. In fact, as was the case with the Meston Settlement, it must in their opinion rest with the Central Government to decide when any surplus shown in the Budget is evidence of a reliable margin of receipts over expenditure sufficient to justify the permanent sacrifice of productive revenue. When, however, this condition has been reached and any source of revenue has been transferred for the benefit of the Provinces, it will, in the opinion of this Government, still be necessary to allow sufficient elasticity to the revenues of

the Central Government to enable it to cope with emergencies and they agree with the suggestion contained in paragraph 163 of the Report that in such cases a surcharge could be levied for the benefit of the Central Government on any such source of revenue. They feel, however, some doubt whether even such a provision will by itself be sufficient and incline to the view that the Central Government must retain the power to fix the rates at which the various taxes are to be levied for provincial purposes; otherwise they might in an emergency find themselves without a taxable margin and the suggested surcharge would be infructuous. They are further of opinion that it will be desirable to retain some such provision as that of the present Devolution rule 19 to ensure that the Central Government can in case of need call upon the provinces for assistance.

4. The time-table suggested being hardly a matter of practical politics, it seems that the provinces will for a more or less indefinite period get no appreciable share of Central revenues. They will thus have to depend at the outset upon the other features of the scheme for any improvement in their financial position. Before examining these, however, the Government of Bengal desire to point out that in the meantime circumstances may arise in which from time to time the Central Government will find itself in possession of a substantial surplus though it cannot reckon upon its recurrence. It seems reasonable that the provinces should benefit from any such surpluses and that these should be distributed to them on some such automatic basis as is suggested for the "Provincial Fund". It might be necessary to lay down that the provinces should apply such wind-falls to non-recurring expenditure or to reduction of debt, but the main point is that, while waiting to share in the results of a permanent improvement in the Central Government's financial position, they can fairly claim to share in any temporary excess of Central Revenue over expenditure.

5. The resources of the Provinces, as contemplated by the Commission, will consist of the following :—

- (1) Existing provincial sources of Revenue, *less* commercial stamps and High Court fees.
- (2) Terminal taxes.
- (3) Surcharges on personal incomes liable to income-tax.

- (4) Increased excise duty on foreign liquors.
- (5) Fifty per cent. of the yield of personal income-tax when released by the Central Government.
- (6) All the income-tax on agricultural incomes.
- (7) Share of the "Provincial Fund".

6. As regards the first item, it is to be noted that the receipts in Bengal from commercial stamps when last calculated amounted to Rs. 41 lakhs, while the receipts from miscellaneous High Court fees, *i.e.*, those not paid in judicial stamps (which as proposed in paragraph 347 of the Report will remain provincial) come to about Rs. 3·27 lakhs annually.

As regards the increased excise on foreign liquors, it has been calculated on present rates that the increase in receipts in this Presidency will be about Rs. 27 lakhs. Sir W. Layton reckoned that, as far as the Central Government are concerned, the loss on foreign liquors and the gain on commercial stamps will about balance, but it will be seen from the above figures that this Presidency will stand to lose about Rs. 17 $\frac{1}{4}$  lakhs annually. The Government of Bengal do not, however, oppose the suggested adjustment of these two heads and the High Court fees, provided that this lee-way is made up elsewhere.

7. As to the second item, terminal taxes, the situation in Bengal is complicated in this respect in that a terminal tax on passengers is already levied for the Calcutta Improvement Trust, one on goods is levied for the present Howrah Bridge and one on passengers is proposed for the Howrah Improvement Trust. But apart from this and from the difficulty of calculation and collection, it seems likely that, if imposed on the scale suggested by Sir W. Layton, terminal taxes will amount to an excessively high surcharge on railway freights, which is to be deprecated on general grounds and will be strongly resented by trading interests. On these considerations the Government of Bengal are of opinion that the proposal is hardly within the bounds of practical politics.

8. As regards the taxation of agricultural incomes, it is not very clear from paragraphs 269 and 270 of the Report whether the intention is that this should be imposed Centrally or Provincially, but in the opinion of this Government, apart from the difficulties presented by the varieties of land revenue systems obtaining in different parts of



India, this is a tax which could be imposed only by a responsible Government, and it may be accepted as certain that no Legislative Assembly, at any rate in the next few years, would pass such a taxation bill. The subject has often been discussed before, *e.g.*, by the Taxation Enquiry Committee, and it is beset with serious political, legal and administrative difficulties which it would be unwise to ignore or to minimise. Also the estimate of yield has varied from less than Rs. 1 crore to Rs. 3 crores. Sir W. Layton assumes Rs. 5 crores, which would appear to be far too high a figure. In paragraph 269 of the Report it is stated: "Increased productivity, together with the rise of prices since pre-war days, has enormously increased the money value of India's agricultural products". If we consider that one of the major difficulties at the moment is the heavy fall in prices of agricultural produce, *e.g.*, cotton and wheat, and that raw jute in the present year is touching absolutely rock-bottom prices, Sir W. Layton's generalization is open to severe challenge. As regards the possibility of taking agricultural income into account for the purpose of calculating the rate of income-tax, this seems open to precisely the same objections as a tax on the agricultural income itself, which it would in effect be. The Government of Bengal, therefore, consider that the proposal to tax agricultural incomes, either directly as such or indirectly through the rate, is one that must be rejected.

9. It thus appears that the only sources from which the provincial Governments are likely to secure increased revenue are the surcharge on personal incomes liable to income-tax (item 3), half share of personal income-tax (item 5) and their respective shares of the Provincial Fund (item 7). The date when they will receive any share of the personal income-tax is, as already noted, exceedingly uncertain and therefore this source must be excluded in considering the financial condition of the Provinces at the inception of the Reforms. As regards the proposed surcharge on personal incomes, the Commissioner of Income-tax, Bengal, has furnished the following figures as the total income-tax realized from personal incomes:—

	(In thousands.)
	Rs.
1927-28 . . . . .	1,74,11
1928-29 . . . . .	1,92,22
1929-30 . . . . .	1,95,76

This gives an average of Rs. 1,87,36,000 per annum. This, on the supposition that the maximum surcharge is at once imposed, gives an additional revenue of Rs. 46·84 lakhs annually, but it should be borne in mind that this yield depends on the maintenance of satisfactory economic conditions, and that a trade depression such as is being experienced at present will materially affect it. It further seems open to doubt whether the Provincial Finance Minister would take upon himself the onus of proposing to impose the maximum surcharge at the outset. Apart from that, however, the Government of Bengal accept the proposal that provincial Governments should be empowered to levy this surcharge.

10. The "Provincial Fund" is to include the following :—

- (1) An excise on tobacco (paragraph 272).
- (2) An excise on matches (paragraph 273).
- (3) The duty on salt to be transferred if and when the Central Budget permits.
- (4) Any other tax of the kind which may be subsequently imposed.
- (5) Ultimately a proportion of the Customs revenue.

Of these items it seems unlikely that (3) and (5) will find their way into the Fund in the near future. It also seems unlikely that further taxation on the lines of the proposed excises on matches and tobacco will be introduced or carried for a considerable period. It thus appears that at the outset the Provincial Fund will be limited to these two excises, but the Government of Bengal have been unable to discover at what stage of the constitutional changes the necessary legislation to impose them is to be carried. The natural assumption is that, while provision for constituting a Provincial Fund is to be included in the new Government of India Act, the actual legislation to introduce the new taxation will have to be proposed and carried in the new Federal Assembly. If this is the correct view, it seems by no means an unreasonable possibility that that body will refuse to pass the requisite legislation, in which case the Provincial Fund will be a mere name without substance. For present purposes, however, it is assumed that this legislation will be successfully carried through. Sir W. Layton reckons that these excises will yield about Rs. 8 crores at the end of 10 years over

the whole of India. What initial yield may be assumed has not been stated. This, however, is a point which will be discussed later. It is sufficient for the present to say that the Government of Bengal approve the idea of establishing this Provincial Fund. They are, however, not so satisfied as to the proposals regarding its future modification. In fact they find considerable difficulty in understanding the formula "a majority of the representatives of two-thirds of the Governor's Provinces, including for this purpose the North Western Frontier Provinces", which is given in paragraph 163 of the Report. It presumably refers to the elected representatives of the Provinces on the Federal Assembly and excludes nominated and other members, but even so its exact implications are obscure and it reads as if three of the larger Provinces could successfully block any proposal for reallocation or redistribution of the Provincial Fund, however, unfair the original arrangement might have proved to some of the others. The Government of Bengal consider that the procedure proposed is likely to be too rigid and would prefer some simpler machinery which would ensure a periodical revision. In view of the possibility of conflicting provincial interests, resulting in a deadlock, they also consider it desirable to reserve to the Central Government the power of initiating taxation for the benefit of the provinces.

11. It is proposed that the Provincial Fund, when constituted, is to be distributed to the Provinces on the basis of population and, while recognizing that this may operate unfavourably to the less populous provinces, the Government of Bengal consider that it is the most satisfactory course to pursue. It is in fact difficult to conceive any other solution which would not involve a consideration of provincial needs, a method which as already indicated bristles with difficulties and seems hardly likely to produce a more satisfactory result.

12. The application of the Commission's proposals to the finances of Bengal may now be considered in the light of the foregoing observations. As already noted, it has not been stated what yield may be expected from the excises on matches and tobacco when first introduced, but if Sir W. Layton's estimate of Rs. 8 crores for the whole of India after 10 years is at all correct, it may not be unduly optimistic to take half of this as the initial yield. On this basis the share of Bengal at the beginning on the population basis would amount to Rs. 82 lakhs. The yield from

a surcharge on personal incomes of the maximum amount would, as shown in paragraph 9 above, amount to Rs. 46·84 lakhs. The total increase to Provincial revenues would thus be Rs. 128·84 lakhs, but against this is to be set off a reduction of Rs. 14 lakhs from the excess of receipts from commercial stamps over the new excise on foreign liquor and some Rs. 3·27 lakhs on account of High Court fees, as well as increased expenditure on account of the separation of accounts and audit which has not yet been calculated, but which may be taken as being in the neighbourhood of Rs. 5 lakhs; on the other hand there will be a substantial reduction in expenditure of about Rs. 17 lakhs under the High Court. If Rs. 5 lakhs be taken as the cost of accounts, the total improvement to provincial finance, if all expectations materialize, would thus be about Rs. 123½ lakhs as shown in the statement below :—

<i>New Receipts.</i>	<i>Lakhs.</i>
	<i>Rs.</i>
Surcharges on personal income . . .	+ 46·84
Share of Provincial Fund . . .	+ 82·00
	<hr/>
Total . . .	128·84

*Adjustments.*

*Decreased Receipts.*

	<i>Rs.</i>
1. Commercial stamps minus new excises . . .	- 14·00
2. High Court Fees . . .	- 3·27

*Increased Expenditure.*

3. Accounts . . .	- 5·00
	<hr/>
	- 22·27

*Decreased Expenditure.*

4. High Court . . .	+ 17·02
	<hr/>
Net . . .	- 5·25    - 5·25
	<hr/>
Result . . .	+ 123·59
	<hr/>

From the figures of 1928-29 and 1929-30 as given in paragraph 9 above, it appears that the collections of personal income-tax in Bengal amount to about one-ninth of the total collections of income-tax in India. If therefore Sir W. Layton's anticipation of an increase of Rs. 5 crores in

10 years is correct, the provincial surcharge on the same assumption as above will come to one-fourth of one-ninth of Rs. 5 crores, which equals Rs. 13·88 lakhs, bringing the total surcharge to Rs. 60·72 lakhs. Similarly, if his estimate of Rs. 8 crores for the Provincial Fund at the end of 10 years materializes, the share of Bengal will be Rs. 164 lakhs. Allowing the same adjustments as in the previous calculation for High Court, Excise, Commercial Stamps and Accounts, the net improvement in the provincial position at the end of 10 years without any assistance from Central revenues would be Rs. 219·47 lakhs. This figure falls far short of that which the Government of Bengal consider essential to the proper development of the province, but, if and when the Government of India are in a position to release the share of income-tax suggested by the Commission or the salt revenue for the Provincial Fund, the improvement in Bengal's sources will rise to a figure which may be considered adequate. It must, however, be remembered that the foregoing calculations are based upon so many hypothetical factors that it is quite within the bounds of possibility that the new régime will produce no improvement at all.

13. The Commission's proposals regarding borrowing powers and provincial balances remain to be considered. The former may be summarised as follows:—

- (a) The loans raised by Provincial Governments should be subject to standard regulations and their raising should be co-ordinated.
- (b) To this end a Council of Provincial Finance Ministers should be instituted, over which the Finance Member of the Government of India should preside. Its tasks should be "to establish a borrowing programme, to lay down the standard regulations, and to arrange terms with the Government of India". It should, however, be advisory only for the present, and the real power should vest in the Central Government. On the other hand, it is contemplated that the latter should not act without consulting the Council, since it is specifically stated that consultation should invariably be made before special sanction is refused to a loan even where such sanction is definitely required by the regulations.

(c) As responsible Government in India develops, the Council may cease to be a mere advisory body and may acquire real power.

These proposals, in the opinion of the Government of Bengal, should be accepted in the main though some elasticity should be provided to allow of provinces assuming complete control of, and responsibility for, their own finances, it being quite conceivable on the one hand that a province might command better credit than the Central Government and on the other that the credit of the latter might be gravely impaired by bad finance in one or more provinces.

14. As regards provincial balances, Sir W. Layton's reasons for recommending that the Provincial Balances should not be separated are given in paragraph 310 of the Report, and in the last sentence of paragraph 189 the Commission say that they agree generally in Sir W. Layton's observations in regard to the keeping of Provincial Balances. There is no strong demand for a change and the Government of Bengal accept the proposal that matters should remain as they are as far as the Provincial Balances are concerned. It is possible that at some time in the future an autonomous Provincial Government may desire to maintain its own balances, but the matter may be considered when that demand arises.

15. The foregoing paragraphs deal with the main features of the scheme contemplated by the Statutory Commission but certain points of detail require further examination, as well as some of their miscellaneous suggestions.

16. To return to the proposed provincial excise duties on foreign liquors, which are considered in paragraph 291 of the Report, although at first view the suggestion is simple and attractive, closer examination reveals innumerable practical difficulties of which intricate interprovincial adjustments, a multiplication of bonded ware-houses and a general clogging of the trade are a few. It, therefore, seems preferable that a uniform customs duty should continue to be levied and the proceeds, after deduction of the "luxury duty" portion, distributed among the provinces, either according to consumption or through the Provincial Fund according to population.

17. As regards the suggested excise on matches, a subject which has already been under discussion between the Government of India and Local Governments, the Govern-

ment of Bengal agree that this should be centrally fixed at a uniform rate throughout India. They realize that, before the excise can be introduced, agreements will have to be reached with the Indian States, and as this is likely to delay matters considerably, they would urge upon the Government of India the necessity of getting their proposals into definite shape as early as possible.

18. The same applies to the proposed excise on tobacco. Sir W. Layton seems to have had cigarettes particularly in mind, but it appears to this Government that the excise should be imposed on all forms of factory-produced tobacco. The question of taxing raw tobacco or of imposing vend licenses may well be left to the provincial Governments to take up if they please.

19. In paragraph 275, Sir W. Layton suggests that cesses on land might be suitably increased. Actually an Act has just been passed in this province imposing an additional cess for the purpose of primary education. Any proposals for its further increase must be left to the provincial Governments and legislatures, but seem likely to meet with very considerable opposition.

20. As regards the proposal in paragraph 267 of the Report that the lower limit of liability to income-tax should be further reduced and the general rate of progression steepened, this Government, while expressing no opinion on the latter proposal, doubt if there are good grounds for adopting the former. Lower individual incomes already pay more tax than is levied in the United Kingdom in the case of married persons owing to the family deductions allowed there, while to lower the limit would mean the imposition of a tax which would fall mainly upon the lower grades of salaried employees of Government. Such a proposal would be greatly resented and the Government of Bengal doubt if the yield would be so much in excess of the cost of collection as to justify its imposition.

21. The question of death duties has been under the consideration of this Government since 1922 and was last investigated in connection with Mr. Burdon's letter No. F-3-(XIII)-F-27, dated the 28th November 1927, but no definite decision has been reached. Their tentative opinion is that this is a matter for provincial legislation, though it will probably be necessary to reserve to the Centre control over the rate of tax in order to avoid differences between provinces.

22. A reference is invited to paragraphs 346 and 347 of the Report in which it is proposed that the administration of the High Courts and the expenses thereof should be transferred to the Central Government, the latter being compensated by making High Court fees a source of central revenue; it is at the same time suggested that judicial stamps should remain provincial. The intention apparently is that all fees which are not paid in stamps should be credited to Central revenues. It has already been pointed out in paragraph 6 of this letter that the income from fees not paid in stamps amounts to about Rs. 3·27 lakhs. The income from fees paid in stamps (Rs. 27·11 lakhs) which includes the very important item, probate duty (Rs. 16·27 lakhs), is very much greater, and the Government of Bengal would like to be assured that this revenue will not be taken from them. As pointed out in paragraph 12 of this letter, the adjustments resulting from the transfer of commercial stamps, excise on foreign liquors, accounts and the High Court would mean a net loss to this province of Rs. 5¼ lakhs. If the probate duty and High Court fees realized in stamps are also transferred to the Centre, the position of this province will be worse than it is at present to the tune of Rs. 32 lakhs and upwards while its increased receipts are, to say the least of it, highly problematic. The question is thus one of the utmost concern to this Government and they are anxious that the transfer of the High Court should not involve any change beyond the actual proposal contained in the concluding portion of paragraph 347 of the Report.

23. As regards the separation of accounts and audit, this Government agree that this is desirable in theory and they will be ready to put it into practice as soon as funds permit. For the purpose of previous calculations the additional cost has been taken at Rs. 5 lakhs annually. But this is a pure guess and it may work out at a much higher figure. The United Provinces which alone have introduced this separation have had, it is understood, to incur an additional expenditure of some Rs. 9½ lakhs, but against this have to be set off not inconsiderable savings which have resulted from the separation. If and when this change is introduced, the Local Government will have to rely, at all events for some years, upon the Central Government supplying officers from their Accounts cadre to conduct the work for them.



24. Although it is recognized that no time-table can be fixed for the surrender to the provinces of Central sources of revenue, it is not unreasonable to expect that the Central Government will be in a position as time goes on to make increasing surrenders, and the question will arise in what order the surrenders should be made. Sir W. Layton's proposals which have been endorsed by the Commission definitely recommend that a start should be made with income-tax in order to benefit the industrial provinces, particularly Bombay and Bengal. The Government of Bengal naturally prefer that a share of income-tax should be surrendered first as they stand to gain thereby, but the difference between that and receiving a share of the salt revenue on the population basis will not be so great that they would stand in the way of the latter being chosen first. Presumably, however, the question as it first arises will not be whether the whole of salt or the half share of personal income-tax is to be transferred; the position will be that the Central Government will have a certain surplus upon the recurrence of which they feel that they can rely and the question will be whether this is to be distributed to the provinces through the Provincial Fund on the basis of population by the surrender of a portion of the salt tax, or on the basis of origin as a portion of the income-tax. In the view of this Government it would probably be fair to all provinces if half of the surplus was taken under one head and half under the other.

25. Although the provincial Governments are hardly concerned in the matter, the Government of Bengal agree with the proposal in the concluding portion of paragraph 311 that the present provision requiring the authority of an Imperial Statute for the raising of Sterling loans by the Secretary of State can be abolished, and they do not see any objection to the further proposal that the function of borrowing in London should be transferred from the Secretary of State to the High Commissioner.

26. In paragraph 187 the Commission recommend that the present restriction on spending money from provincial funds on central subjects and *vice versa* should be relaxed and that it should be rendered constitutionally possible under suitable restrictions to assist provincial objects from central funds. They do not state what they consider to be a suitable restriction, but there should not be any difficulty in devising a formula to enable such mutual assistance

to be given for purposes which are of general as well as of local interest, and the Bengal Government support the proposal.

27. In paragraphs 160 and 161 of the Report the Commission propose to retain the power of initiating measures of taxation for Central purposes exclusively in the hands of the executive and to make no change in the existing system of voting estimates. This means that the initiation of proposals, both for taxation and for expenditure, is to remain with the executive. The Government of Bengal consider that this is essential and that it should be definitely laid down that this principle is to apply in the provinces as well as in the Central Government. This would not prevent the local legislatures passing resolutions recommending certain expenditure to Government, but the introduction of the actual proposals for such expenditure must rest with the Government itself and be introduced by one of the Ministers.

28. There remains the question of territorial adjustments. These, if the Commission's proposals are adopted, will involve the transfer of two small blocks of land to the new Oriya-speaking province and the exclusion of the Chittagong Hill Tracts and possibly the Darjeeling District. This implies important adjustments of both revenue and expenditure, but it has been considered premature to examine at this stage the actual financial effects.

29. Before concluding the Government of Bengal desire once more to lay stress upon the imperative necessity of ensuring that the provinces obtain increased resources from the introduction of the new constitution. Attention has already been drawn to this in paragraph 2 of this letter, while the problematical nature of the effects of the proposed scheme has been stressed in paragraphs 10, 12 and 22. No scheme of constitutional reform, however satisfactory in theory will have any chance of success unless the financial position of the provinces can be improved from the very beginning. The present political movement has affected the income and expenditure of both provincial and Central Governments, and it seems essential that steps should be taken at once to restore financial stability if the provinces are not to enter upon the new régime with empty purses and with no immediate prospect of replenishing them. It thus appears to be of the utmost importance that the Government of India should take immediate steps to add to

their resources by increased taxation in order that they may be in a position to surrender some portion of the income-tax or salt duty to the provinces as soon as the new constitution is introduced.

30. In conclusion I am to express the regret of this Government for the delay which has occurred on account of a variety of causes in the submission of these views.

---

No. 1013-A. D., dated the 18th/20th September 1930.

From—The Government of Bengal,

To—The Government of India, Reforms Office.

With reference to paragraph 18 of letter No. 219-A. C., dated the 15th August 1930, I am directed to submit herewith a further note, dated the 19th September 1930, by the Muhammadan members of Government on communal representation.

*Note by the Muhammadan Members of Government, dated 9th September 1930, on Communal Representation.*

All arguments for and against the retention of communal or separate electorates have been threshed so threadbare that the Moslem Members of Government did not think it necessary to refer to this matter in their previous note on Moslem representation in the local Council. Since, however, a note has been added on the subject by a Hindu Member and since a few other matters have been touched upon by him in a previous note, added as Appendix A to the letter from the Chief Secretary to the Government of Bengal to the Secretary, Government of India, Reforms Office, dated 15th August 1930, the Moslem Members would refer to these points briefly in the present note.

Separate electorates were recognised as necessary by Lord Dufferin as early as 1888 and then by Lord Lansdowne in 1892. Lord Minto in 1906, in reply to an address presented by a deputation of leading Moslems headed by H. H. The Aga Khan (Ref. E. Ind., 209), gave clear and distinct assurance that separate electorates would be introduced. The assurance given by Lord Minto was confirmed by Lord Morley in the House of Commons in the following words:—

“ The Muhammadans demand three things. I had the pleasure of receiving a deputation from them

and I know very well what is in their minds. They demand an election of their own representatives to these Councils in all the stages just as in Cyprus, where I think the Muslims vote by themselves . . . . . Secondly, they want a number of seats in excess of their numerical strength. These two demands we are quite ready and intend to meet in full."

Separate electorates were granted to Moslems in the Reforms of 1909, accepted by the Hindus in the Lucknow Pact in 1916, and maintained by the Montagu-Chelmsford Reforms of 1919. The All-India Muslim League, at a meeting at Lahore in 1924 under the presidency of Mr. Jinnah, passed a resolution claiming separate electorates for Moslems in the future constitution of India. A similar resolution was passed by the All-India Muslim League at Aligarh under the presidency of Sir Abdur Rahim on the 31st December 1925, the resolution being moved by Sir Ali Imam. Again on the 31st December 1926 at the Annual Session of the All-India Muslim League at Delhi, Mr. Jinnah moved a resolution in favour of separate electorates. The resolution was carried unanimously. At the historic All-India Muslim Conference held at Delhi on the 1st of January 1929 where Moslems of all shades of opinion met together for the first time, the same demand was reiterated.

It will thus be seen that Moslem India is unanimous in insisting upon separate electorates in the conditions that now prevail. This question has been examined at great length by the Simon Commission and we would refer to pages 137-139 of Vol. I and pages 56 to 60 of Vol. II of their Report. The Commission are unanimous in holding that communal representation for the Muhammadans of a province must be continued. We may also add that separate electorates have been recommended in the reports of almost all the Provincial Committees that were appointed to assist the Simon Commission. These Committees, as is known, were composed of both Hindus and Moslems.

We now refer to the main objections raised against separate electorates, *viz.*:—

- (a) That they are against the teachings of history and perpetuate class divisions. The answer to this will be found in the following quotation from

the Bengal Legislative Council Proceedings, 1918, Vol. XXVII:—

“ The history of what nation, what country, one naturally asks? If one goes to history for assistance one stands upon dangerous grounds. In the history of what nation, and of what country, have we got an example of the system of government which is offered under the reform scheme? We cannot find a historic precedent and example anywhere. The only reasonable reply to a demand for historic example would be that the conditions and circumstances of India are unique and unprecedented. It is on these unique and unprecedented conditions and circumstances peculiar to India that the Muslims base their claims for communal representation. ‘It perpetuates class division.’ This proposition provokes the smile of every student of Indian history. Class and caste divisions stereotyped in the adamant mould of immemorial custom going back to the days of Asoka and Chandragupta and beyond, do not, for their perpetuation, stand in need of a council election every three or five years, which touches only the barest fringe of the vast population of India.”

(b) That they are responsible for communal riots. For an answer to this we would only quote the following from the Supplementary Note to the Indian Central Committee’s Report at page 44:—

“ The perennial cause of communal riots, if the truth is to be told, is the intolerance of the communities concerned and their lack of mutual forbearance and self-restraint, and the weak and vacillating policy of the authorities.....”

“ Long before the inauguration of the Reforms, Morley-Minto or Montagu-Chelmsford, long before the birth of separate electorates, the bigotry and intolerance of the followers of the rival creeds converted almost each of the three principal feasts of Islam (*viz.*, two Ids and Muharrum) into a veritable feast of tears and sorrow. The Baqr’Id and

Muharrum have always been the source of annual anxiety to all concerned and the cause of disturbing the friendly relations which normally subsist between Hindus and Muslims. To this has lately been added the provocation of what is called 'Music before Mosque' . . . . . The Hindus claim their civic right of using the King's highway and of playing music as they like, but they deny at the same time the use of the King's highway to the despised untouchables and challenge the Muslim's right of leading along the same highway their sacrificial cows to the places consecrated for sacrifice. . . . The unprejudiced observer will be convinced that there is no connection whatever between communal electorates and communal riots and that the causes of these troubles are of old standing and rooted in the difference of manners and customs of Hinduism and Islam."

It will be obvious to any impartial observer that the recent riots to which reference has been made in the Hindu Member's note, are not in the least due to separate electorates. In fact the reverse would be more correct. In a joint electorate communal passion is more likely to be engendered. Both the Muhammadan and the Hindu candidate would be likely to appeal to the communal feelings and bitterness of the voters in a mixed electorate, and thus there is much more likelihood of a larger increase in communal riots; whereas a Moslem candidate can scarcely appeal to communal passions against another Moslem candidate in an electorate of their own. This is equally true of the Hindu candidate. In this connection we would also refer to the Supplementary Notes by the late Nawab Bahadur Saiyid Nawab Ali Choudhury, Khan Bahadur, C.I.E., of Dhanbari, and Nawab Mushrafi Hossain, Khan Bahadur, on pages 248 to 251 and 229 respectively of the Report on the Working of the Reformed Constitution in Bengal, 1921-27.

A reference has been made to the district board elections in Bengal, particularly East Bengal; but while example has been cited from Eastern Bengal, nothing has been said of Western Bengal. In the former, Moslem population is on average 70 to 80 per cent. and that is why Moslems are

returned in large numbers. But what about Western Bengal, where conditions are just the reverse? On a reference to Appendix G of Government of Bengal's publication entitled, "Resolution Reviewing the Reports on the Working of District Boards in Bengal, during the year 1928-29", it will be seen that out of 15 districts that comprise East Bengal, the percentage of Moslem members of district boards is over 50 per cent. in 11 only; whereas out of 11 districts in West Bengal, the percentage of Moslem members varies between 4 per cent. and 23 per cent. in 8 of them. The percentage of total Moslem members of district boards, taking both East and West Bengal, is only 40.8 per cent. It must be remembered that these figures include members that have been appointed by Government to adjust the communal balance. Almost the same percentage will be found in the local boards, and in the union boards it is still less. From this it will be apparent that, even taking the preponderating Moslem population of East Bengal with that of West Bengal, Moslems scarcely have a fair chance of being returned in adequate numbers through joint electorates.

The Moslem Members do not agree with the Hindu Member of Government that "if the recommendations of the majority of the Government are accepted it will inevitably lead to a rapid disintegration of the structure of society in India—including British and Indian". They agree that the existing franchise should not be broadened by more than double and not treble as suggested in paragraph 106 of the Commission's Report. They also share the Hindu Member's apprehensions that the class of Muhammadans that will be returned to the enlarged Council through the enlarged electorates, might have a less stabilising influence than those who now come by the door of election. If any feasible scheme is worked out, such, for instance, as election through separate electoral colleges for each community, it might have their support.

Finally they wish to lay stress on the fact that the Lee rate of Indianisation should, if anything, be retarded on the ground that the present rate is working unfairly to Muhammadans. They urge that, if the present rate is maintained, then it should not be done to the detriment of any particular community, but should be carried on gradually with due regard to the communal proportion and to the securing of the widest possible confidence in the administration.

No. 4949-C., dated Naini Tal, the 23rd August 1930.

From—KUNWAR JAGDISH PRASAD, C.I.E., O.B.E., I.C.S., M.L.C.,  
Chief Secretary to Government, United Provinces, General  
Administration Department,

To—The Joint Secretary to the Government of India, Reforms Office.

I am directed to submit herewith the views of the Government of the United Provinces on the recommendations made by the Indian Statutory Commission in the parts of their Report mentioned in para. 3 of the Government of India's letter No. F. 67—30-R., dated June 24, 1930. As desired by the Government of India this Government have dealt with each matter in the order in which it comes in the Report.

2. As will be seen the local Government have confined themselves to questions which fall within the scheme as presented by the Commission. They have not considered, for instance, the reactions which would result in the provincial sphere from the adoption of any proposal to introduce a measure of responsibility in the Central Government. It is clear that such reactions would be far-reaching, and I am to say that His Excellency the Governor hopes that, should it be decided to bring this matter within the range of discussion, he and other members of his Government who may desire to express an opinion on the subject may be afforded an opportunity of doing so.

## PART I.

### CHAPTER 2.—THE MECHANISM OF ADVANCE.

3. In this chapter the Commission have pointed out that though the ultimate goal of responsible government is, according to the Preamble of the Government of India Act, to be reached by successive stages, there is no reason why the length of these stages should be settled in advance or why each stage should be marked by a commission of inquiry. The Commission then go on to point out the disadvantages of a temporary constitution, and suggest that what is wanted is the introduction of a constitution which will be sufficiently elastic as to be capable of adjustment to the particular needs of any given province at any given time. The results of fixing a ten-year period in the Government of India Act, 1919, are sufficiently well known, and in the opinion of this Government there can be no question that it is desirable if possible to establish



a constitution which, instead of needing to be overhauled after fixed periods, will be capable of natural development to suit the needs of each province and of India as a whole

## CHAPTER 5.—THE NEED FOR SAFEGUARDS.

4. This chapter deals in a general manner with the need for safeguards in a new constitution, and lays down three main propositions, namely:—

- (1) that the Army must be adequate for defence and for many years to come British troops and British officers with Indian troops will be necessary,
- (2) that there must be a power to step in to preserve law and order and maintain the vital services and that this power should vest in the Governor-General or the Governor, as the case may be, and
- (3) that there must be some means of protecting the interests of minorities and that the only practical means of doing so is to vest the Governor-General and the Governor with general powers.

This Government accept all three propositions subject to anything that is said in later portions of this letter in regard to the means of applying them, and in the case of Nawab Sir Ahmad Sa'id Khan subject also to the views in regard to the Army expressed by him in the extract from a note on that subject which will be found in the appendix to this letter. As the Government of India have not asked this Government for their views on the subject, the other Members of Government do not offer any opinion.

## PART II.

### CHAPTER 1.—THE PROVINCIAL EXECUTIVE.

#### *Need for Provincial Redistribution.*

5. The Commission consider that the present arrangement of provincial areas is not altogether satisfactory and that some re-adjustment is desirable. The recommend

that a Boundaries Commission should be set up to investigate the main cases in which provincial re-adjustment seems called for and to endeavour to work out schemes with a view to seeing how far agreement is possible. This is a matter which does not directly concern this province. Though the province is large in area and densely populated, it contains no obvious or natural line of division and constitutes a territory which is fairly homogeneous in regard both to race and language. A smaller unit would perhaps be more easily administered, but no division could be devised that would not give rise to much opposition. Furthermore, there is at present no public demand for such division. In these circumstances this Government assume that the position of this province would not come within the scope of the Commission's inquiry and on that understanding they do not desire to offer any opinion on the proposal.

### *Form of Provincial Government.*

6. Before the structure of the provincial Government is considered in detail, it is necessary to decide the type of architecture to which it is to conform. Here the broad issue is whether the present dyarchic form of government is to be retained or whether it should, as recommended by the Commission, be replaced by a unitary government in which all division of subjects will be abolished and every subject will be administered by a ministry responsible to the legislative council. The risks involved in the establishment of any system of responsible government in this province are by no means negligible. They have already been described in the memorandum which the Governor in Council placed before the Commission, and it is unnecessary to repeat them here. They have not been lessened by the experiences of the past two years. But, having regard to the opinions expressed on the part of the Governments of other provinces, of the various Provincial Committees, of the Indian Central Committee and of the Commission itself in favour of the abolition of dyarchy and the establishment of a unitary system of government, the United Provinces Government are of opinion that this development must now be regarded as inevitable. They will deal below with the safeguards with which such a system of government must, in their opinion, be accompanied.

*Composition of Ministry and its relation to the legislature.*

7. This Government agree with the following proposals relating to the composition of the Ministry and its relation to the legislature:—

- (1) That each member of the Ministry should be required to accept responsibility for the whole policy of the Government.
- (2) That it should be open to the Governor, under the restrictions noted below, to include in the Ministry non-officials other than elected members of the legislature.
- (3) That the salaries of Ministers should be fixed by provincial Statute and should only be alterable by a similar provision. (It is presumed that the Statute would deal only with salaries and not numbers of Ministers, the latter being more suitably left to be determined by circumstances.)
- (4) That votes of censure should be admissible only when they apply to the Ministry as a whole.

His Excellency the Governor and the Members of his Executive Council also accept the Commission's view that in the new Governments it may be found useful to include certain minor posts, equivalent to those of Under Secretary in England. His Excellency's Ministers do not see the need for any such posts.

8. The proposal that the Governor should be free to include one or more officials in the Ministry is one on which the opinion of the members of Government is divided. Nawab Sir Ahmad Sa'id Khan and all three Ministers oppose the proposal. Their first objection to it is that it will largely perpetuate the system of Executive Councillors because, as contemplated by the Commission, the official member will not necessarily change with each change of Ministry but may be reappointed as member of one Ministry after another. He will therefore have a different form of tenure from his colleagues. In the second place they feel that the presence of an official member will detract from the solidarity of the Ministry and be a source of weakness to it rather than of strength in the face of the legislature. They fear that just as at present the reserved subjects form a special point of attack in the council, so the matters in

the portfolio of an official Minister will be subjected to special criticism, and that this may embarrass the position of the whole Ministry in the legislature. These two objections are explained in greater detail in the extract from a note by Nawab Sir Ahmad Sa'id Khan which will be found in the appendix to this letter. A further objection that has been made is that the inclusion of an official will effect the numerical strength of the Hindus and Muslims in the Ministry. His Excellency Sir Malcolm Hailey and Sir George Lambert consider that the Governor should be given the widest possible latitude in the choice of his Ministry and that there will be sufficient practical limitations on his freedom of choice without the imposition of statutory restrictions. They are not disposed to accept the objections mentioned above as decisive. In their opinion there will be no real comparison between the position of an official Minister and that of an Executive Councillor. In the first place the appointment of such a Minister will depend on the willingness of the other Ministers to work with an official on a basis of joint responsibility; it would be difficult to force him on a Ministry which expressed itself as unwilling to admit him as a colleague, and the decision as to whether there will or will not be an official Minister would not therefore in practice rest with the Governor alone. Again, if this initial difficulty is overcome, then the distribution of portfolios will be a matter of mutual arrangement between the Governor and the Ministers, and it will certainly not be possible for the Governor, even if he wished to do so, to decide that the official should hold charge of one of the portfolios which has up till now been under a member of the Executive Council. I am to add here that Sir Malcolm Hailey adheres to the view which he placed before the Commission as Governor of the Punjab, when putting forward this proposal in a slightly different form, that there should be no convention under which the official member of the Cabinet would hold charge of any definite portfolio such as Home or Finance. Indeed, his own view is that he should hold charge of a portfolio of minor importance so that he may have time to discharge what Sir Malcolm conceives should be his main function, namely, of acting as an expert adviser on administrative matters to the Cabinet generally. The Commission's observations regarding the retention of official Ministers in a new or reconstituted Ministry have been held to justify

the comparison of an official Minister with a member of an Executive Council. But the Commission have themselves expressly repudiated any resemblance between the two and the main object of their remarks in regard to the retention of an official Minister in a new Ministry appears to have been to try to meet the criticism that while non-official Ministers on resignation can retire into private life, the position of officials will be more difficult and resignation from the Ministry may involve also the closing of their careers. On this point all that need be said is that officials must obviously resign with their colleagues and that their inclusion in the new Ministry will depend not on any *fiat* of the Governor but on practical considerations, of which the most important will be the attitude of the other Ministers who will compose the new Ministry and the attitude of the legislature. It may be added that as the number of Ministers will probably be much greater than that of the present strength of Executive Councillors and Ministers combined, and as the salary attached to the post will consequently in all probability be much less than that of an Executive Councillor, it will be much easier for an official member of a Ministry to revert to his previous post than it would be under existing circumstances for a member of an Executive Council. The question whether an official will be a source of strength or of weakness to a Ministry is for the other Ministers to decide. The fear that he will be a source of weakness is hardly an adequate reason for preventing a Ministry which takes a different view from having the advantage of the advice and assistance of an official. Sir Malcolm Hailey and Sir George Lambert believe that the proposal, besides not being open to the objections urged against it, will have positive advantages both for the Ministers and for the Governor. It is inevitable that many Ministers will have no administrative experience, and it is certainly conceivable that some will realize the advantage of having a colleague who with no superiority of status but from the position of an equal will be available, when wanted, to give advice based on a long and intimate experience of administrative problems. It is also probable that the Governor, whose position will be very different from that of a Governor under the present constitution, will feel the need of having in the Ministry some one with administrative experience on whom he can rely to point out to the Ministry in their daily working the

implications of decisions which they are contemplating and the probable or possible results of such decisions. The administrative machine is a highly complicated one, and it is not to be expected that persons entirely unacquainted with it will be able to ensure a smooth and efficient working without expert advice. It has been suggested that the appointment of a Principal Secretary, who would also be Secretary to the Cabinet, would secure the advantages expected from the inclusion of an official in the Ministry without being open to the same objections. There is indeed something to be said for this proposal in itself as securing to a Governor the means of acquiring the information which will be necessary to him if he is to carry out his duties under the constitution. His Excellency will not, as now, be associated with the current work of the administration, and it is indeed doubtful whether the new relations which will exist between the Cabinet and the Secretaries will permit of the latter having (as now) regular access to the Governor. It is easy to secure to him full information as to Cabinet decisions, but a great deal will take place in departmental work of which he will need to be informed if he is to be in a position to assist Ministers with his advice, or indeed to act effectively where his intervention is necessary. His Excellency the Governor and Sir George Lambert would prefer to have an official Minister, but the other Members of the Government consider that a Principal Secretary would be more in keeping with the general scheme of the new constitution.

9. It has been pointed out that the proposal to permit the inclusion of non-elected persons, as made by the Commission, would leave the Governor free—subject to the superintendence and control of the Governor-General—to appoint a Ministry wholly composed of such persons. There are of course practical considerations which would effectively prevent the Governor from doing any such thing, and the Governor in Council sees no need to include in the Statute a provision restricting the number of non-elected persons to be included in a Ministry. Even though this would restrict the Governor's field of choice and would introduce a greater element of rigidity in the constitution, His Excellency's Ministers would prefer to restrict the number by Statute to not more than one.

10. The Commission found themselves unable to recommend the inclusion in the Statute of any provision for the

inclusion of members of minority communities in the Ministry. His Excellency the Governor and Sir George Lambert agree with the view taken by the Commission that in most provinces prudence, if not necessity, is likely to cause a Governor, with the full approval of the other Ministers, to include at least one Minister from an important minority community. But Nawab Sir Ahmad Sa'id Khan and His Excellency's Ministers would prefer not to leave this matter to be regulated by practical considerations [see extracts A (ii) and (iii) in the appendix]. They argue that in this province the Muslims will secure no more than 30 per cent. of the elected seats in the legislature and will therefore be in a permanent minority. There is at present little sign that the communal factor will in the future count for less in the formation of parties in the legislature than it has in the past. On the contrary, with a more complete transfer of power from an official Government to a popular legislature, and with the proposed removal of the official *bloc*, there is every likelihood that it will count for more. Non-Muslims will be in so large a majority that they may on occasion find themselves independent of the Muslim vote, and it may not be difficult to form a purely non-Muslim Ministry which will be able to rely on the support of a majority of the legislature. These Members of Government therefore would like to see some definite provision made in the statutory rules laying on the Governor the obligation of securing in the Ministry some representation of minority communities, and they ask that if it is found impossible to make such a rule, then at least the Governor's responsibility in this matter should be clearly defined in the Instrument of Instructions. His Excellency's Ministers would like to see Hindus and Muslims represented in the Ministry in the proportion of two-thirds and one-third. The two official members of Government would be glad to find some way of removing the apprehensions of the Muslim minority, for they feel that if this could be effected, the new constitution would start its career in conditions less likely to involve communal discord. But they see more than one difficulty in securing a definite statutory provision for the representation of the minority in the Cabinet. A statutory provision will not be necessary in ordinary circumstances in most provinces and the exceptional circumstances in which it may be needed will be exactly those in which the Governor will

find it difficult, if not impossible, to fulfil the obligation laid upon him. Such circumstances will arise when communal feeling is very strong. If the Governor is then in the position of having to insist, for example, on a Hindu Chief Minister including a Muslim in his Cabinet, the only possible result will be the inclusion of a Muslim who will not have the confidence of his own community and will therefore not be in any true sense representative of it. A further consideration is that any statutory provision would have to be drawn in general terms to apply to all provinces, and there may be provinces in the Governments of which up to the present minority communities have not been represented owing to the fact that they are not of sufficient importance to justify representation. It would clearly be anomalous to impose on such provinces a provision requiring representation which has not been thought necessary up to date. The official members would agree that the Instrument of Instructions to the Governor should include an obligation to attempt to secure representation of the minority in the Cabinet, where such minority is in his opinion of sufficient importance to warrant this. But it must of course be recognized that though this may be of some value in itself, it cannot be in the fullest sense mandatory.

11. The Commission, while expressing the view that there should ordinarily be a Chief Minister, whom the Governor would consult before appointing other Ministers, propose that there should be no requirement in the constitution to make such an appointment. This Government are of opinion that in practice the Governor will ordinarily find it advisable to appoint a Chief Minister in the first instance; he would not himself have power to select his colleagues, but the Governor would find it convenient to select other Ministers in consultation with him. The influence of a Chief Minister will make for unity in the Cabinet and will assist the Ministry in its relations with the legislature. Such an appointment will probably be approved by public men as being in consonance with the usual practice in western parliamentary governments. But on the principle of leaving the constitution flexible, where this can be done, so that it may more easily be made to fit the needs of a given province at a given time, there is no objection to the omission of any constitutional provision prescribing the appointment of a Chief Minister.



*Cabinet procedure.*

12. This Government do not desire to make any comments on the Commission's observations in regard to the part which the Governor should play in the day-to-day work of the Ministry or in regard to his presence at Cabinet meetings. The latter point is one which is best left to be settled by convention. They agree that he should retain his present power of making the rules of business (which would include provision for regulating the class of cases which would require a Cabinet decision) and that it is desirable that Ministers should be encouraged to reach decisions by mutual accommodation rather than by the counting of votes. It is assumed that if decisions are reached by a majority vote, the Governor would not himself exercise a vote. The proposal that a member of the Civil Service should be appointed to a new post of Secretary to the Cabinet, with special access to the Governor, is less acceptable to them [see extracts B (i) and (ii) in the appendix]. The work would clearly be insufficient to occupy the whole time of any officer and the appointment of a permanent official to discharge only the functions suggested by the Commission would be liable to misunderstanding and might give rise to unnecessary difficulties. All that is required is that the Governor should be kept fully informed of the names of the Ministers present and of the decisions reached at meetings from which he himself is absent. The Governor can provide for this himself in the rules of business.

*Over-riding powers of the Governor.*

13. In accepting the proposal that dyarchy should be abolished and that the new provincial Government should be a unitary one responsible to the provincial legislature, this Government have also agreed to the need for certain safeguards. In the provincial sphere the most important of these are that the Governor should have power to direct action to be taken otherwise than in accordance with the advice of his Ministers (1) in order to preserve the safety and tranquillity of his province and (2) in order to protect the interests of minority communities. This Government attach great weight to these safeguards. It is not without considerable hesitation that they have accepted the proposal to transfer all subjects and they would not have

found themselves able to do so, if the Governor were to be in the position of a strictly "constitutional" Governor, bound in all circumstances to accept the advice of his Ministers. It is, however, obvious that the Governor's powers to over-ride his Ministers should not be unrestricted and this Government readily agree first that in all such matters the Governor should be subject to the superintendence, direction and control of the Governor-General, and secondly, that the purposes for which these special powers may be exercised should be clearly stated in the Statute. The Commission have suggested five purposes, two of which are fundamental to the peace and good government of the province, and the other three mainly technical. They have proposed that for those purposes the Governor should be given statutory power—

- (a) in the administrative sphere to direct that action be taken other than in accordance with the advice of his Ministers,
- (b) in the field of legislation to secure the passage by means of certification of Bills rejected by the legislature, and
- (c) in the financial sphere to restore by means of certification grants rejected by the legislature.

It will be convenient to consider all these special powers at one time as the criticism has been made that taken together they give the Governor considerably wider powers than he has at present and to that extent will actually restrict rather than increase the measure of responsible government in the provinces. It is necessary to consider each sphere separately as it is not essential—though it might be logical—to give the Governor the same power to over-rule the legislature in matters of legislation and finance as he is given to over-rule his Ministers on purely administrative questions.

14. *Administrative sphere.*—(1) This Government are agreed that it is essential that the Governor should have power to over-rule his Ministers "*in order to protect the safety and tranquillity of the province*".

(2) The second purpose of intervention, as proposed by the Commission, is "*in order to prevent serious prejudice to one or more sections of the community as compared with other sections*". This Government are agreed that the Governor must be given power to intervene in order to pro-

tect the interests of minority communities. They realize the difficulty which a Governor is likely to experience in exercising such a power, and they are impressed by the view that the power is likely to be more effective if his hands can be strengthened by some statutory provision laying a positive obligation upon him. There is good reason to believe that the Muslim community will not be satisfied without some stronger and more effective safeguard than that proposed by the Commission, and this Government feel that every effort should be made to meet the wishes of the Muslims on this point. It is probable that Europeans and Anglo-Indians will share this feeling, if only in view of the fact that the subject of European and Anglo-Indian education, now a reserved subject, will in future lack this protection. This main difficulty lies in drafting provisions which will be at the same time sufficiently general to be suitable for inclusion in a Statute and sufficiently definite to be really effective. The principal matters in which the Muslim community demand safeguards are these,—

- (i) use of the Urdu language,
- (ii) religious rights and usages,
- (iii) personal law,
- (iv) educational facilities,
- (v) representation in local bodies,
- (vi) representation in the public services.

They would like to see provisions included in the Statute which would recognize their special rights in all these matters and state in general terms the principles on which these rights should be given effect to. They point out that guarantees for the protection of minorities have been included within recent years in the constitutions of certain European States, such as Poland, Czecho-Slovakia and Yugo Slavia, and they are not satisfied that similar guarantees cannot suitably be included in the Statute which will regulate the new constitution in India. The Commission have observed that the provisions in the European constitutions have not been of much practical value, and this Government realize that similar provisions in the Indian constitution will be of little use unless a definite obligation to give effect to them can be laid on some authority and unless there is a definite sanction behind them.

The only possible authority will be the Governor, or the Governor-General, as the case may be, as it would be clearly undesirable to make the enforcement of these provisions depend on an appeal to the courts. Such an appeal has been formally provided in some constitutions, *e.g.*, in the British North America Act of 1867 and in the new German constitution, but in India the effort has consistently been to avoid a procedure of this nature, which is likely in practice to prove both contentious and dilatory. The whole matter is clearly one that requires further detailed examination in consultation with the recognized representatives of the principal minority communities, and all that this Government feel called upon to say at this stage is that they would agree to the inclusion in the Statute of provisions of a general nature, provided that the obligation of giving effect to them is definitely laid on the Governor.

(3) The third purpose is "*to secure the due fulfilment of any liability of Government in respect of items of expenditure not subject to the vote of the legislature*". Some doubt exists whether a power of intervention for this purpose is really required, and it has been suggested that the object could be secured by making provision in the Statute by which all expenditure of the kind referred to will be made a first charge in provincial revenues. It is doubtful, however, whether such a provision would, in the absence of the further power suggested by the Commission, definitely secure the actual payment of these sums.

(4) The fourth purpose is defined by the Commission in these words "*to secure the carrying out of any order received by the provincial Government from the Government of India or the Secretary of State*". It is presumed that this provision applies primarily to the enforcement of the orders received by the local Government from the Government of India in the matters included in the categories given in para. 182 of the Commission's Report. To this extent this Government agree that the power is necessary; and they also accept the view, advanced by the Indian Members of the Government, that the Statute should make it clear that the powers of the Government of India (and consequently those of the Governor also) in this respect should be limited to matters included in those categories. It is not clear why the Commission have included a reference to orders given by the Secretary of State. As shown

at para. 350 of the Commission's Report, the Secretary of State would, in the provincial sphere, issue instructions only on those matters in which special powers are reserved to the Governor, and it is presumed that instructions on these points would reach him through the Governor-General. They would, as shown above, be defined by Statute, and would not extend to a general power of intervention over the whole sphere of provincial administration save presumably in the circumstances described in paras. 65 and 98 of the Report, *i.e.*, when the normal constitution is suspended. This also is a matter which will require clear definition in the drafting of the Statute.

(5) This Government agree that the Governor must be given special over-riding powers for the fifth purpose, namely, *to carry out any duties which may be statutorily imposed on his personally.*

This Government desire to add that in drafting the Statute care should be taken to distinguish the matters on which the personal powers of the Governor are final from those in which he is to be subjected to the control and directions of the Governor-General. The existing Statute is deficient in this respect. The point will become of considerable importance in the future, owing to the fact that the Governor will exist as a statutory authority apart from the local Government.

The Commission have anticipated the objection that these special powers to be given to the Governor are greater than those at present exercised by him in relation to transferred subjects. The objection has no real foundation. At present a Governor has, under Sub-section (3) of Section 52 of the Government of India Act, an unlimited and uncontrolled power to reject the advice of his Ministers and direct action to be taken otherwise than in accordance with that advice whenever "he sees sufficient cause to dissent from their opinion". Under the Commission's proposal he will be empowered to exercise the special power only for the specified and limited purposes dealt with above.

15. *Legislative sphere.*—In the opinion of this Government the Governor should be given power to secure legislation for the first of the five purposes referred to in the previous paragraph. It is however doubtful if any occasion would arise for his securing legislation under the purpose described as (3), while as regards (4) the Government of India should be able to secure their position by

virtue of their power of co-extensive legislation. No occasion seems in practice likely to arise for legislation to secure the purpose described as (5). In regard to the need for an affirmative power of legislation for the second purpose, namely, to secure the protection of minority interests, there is some difference of opinion among the Members of Government. The exercise of the power of the Governor for the protection of minority interests would ordinarily take the form of vetoing legislation prejudicial to such interests or in the alternative, utilizing the power of returning the Bill for reconsideration, or reserving it for consideration by the Governor-General, it being assumed that provisions similar to those embodied in Section 81-A of the Act of 1919 will be repeated in the new Statute. His Excellency's Ministers, however, would like to see an affirmative power of legislation placed in the hands of the Governor. The other Members of Government doubt whether this is a power which the Governor would in practice ever be able to exercise, but they are quite prepared to agree that it should be given him (subject to its being found possible to secure a suitable form of definition) if important minority communities press for it generally. It must, however, be realized that it would give to the Governor a somewhat wider power than he has at present, since he could not, under his present powers, secure by certification the passage of a Bill relating, for example, to Muslim or depressed class education, whereas under the Commission's proposal he would be able to do so "in order to prevent serious prejudice" to either of these communities as compared with other communities. In para. 43 below this Government make a new suggestion for the protection of minority communities from discriminatory legislation, namely, that a provision on the lines of section 67 (2) (b) of the Government of India Act should be applied to legislation in provincial legislatures.

16. *Financial sphere*.—This Government agree that the Governor should have the power of restoring rejected grants for the first, second, fourth and fifth of the purposes mentioned in para. 14 above. This power is not necessary for third purpose which refers only to items of expenditure not subject to the vote of the legislature. They also agree that he should have the full financial powers conferred by proviso (b) of section 72-D (2) of the Government of India Act for exercise in the case of emergency. A reference to

para. 65 of the Report would seem to show that it is intended that this emergency power should only be utilized after a statutory declaration by the Governor that a state of affairs has arisen under which the government of the province could not be carried on under the ordinary constitution provided in the Statute. That declaration would be reported to Parliament. In effect, the Governor would in these circumstances replace the Cabinet for all purposes and a question arises whether the terms used in the present Act, *viz.*, "for the carrying on of any department" would in that case be sufficiently comprehensive. They would probably prove to be so if the Statute gave him final power to define the expenditure necessary for this purpose, but some variation of the language used might perhaps be found desirable, for it might happen that—if the period of this special use of power were prolonged—he might have to meet a considerable variety of expenditure, including non-effective charges, grants to local bodies and even payment of loans to which the local Government stood committed. It is certainly desirable that the Statute should make it clear that the Governor's declaration of the existence of a state of emergency should be final, and not open to question in the courts.

17. The Commission recommend that the Governor should have a power of emergency legislation by ordinance over the whole provincial field. A comparison of paras. 98 and 65 shows that it is intended that this power should come into being only in the circumstances described above, *i.e.*, after a declaration of the suspension of the normal constitution. It is of course intended that in issuing such ordinances the Governor should act under the supervision and control of the Governor-General, but it is not made clear whether the ordinances would be made subject to the procedure which now prevails in regard to Regulations (section 71 of the Act). If that procedure is enforced, it must be assumed that the authority of the Governor-General would be substituted for that of the Governor-General in Council, since the Governor will in this case take the place of the local Government. It may be open to some doubt whether the ordinance-making power need actually extend "over the whole provincial field"; it would probably prove sufficient if the Governor were given the same power in regard to emergency ordinances as in regard to emergency expenditure.

18. The Commission have not proposed to give the Governor any power of intervention to secure the financial stability of the province. They consider that so wide a power of intervention would hinder the growth of responsibility, and that the Government of India's power to control the provincial Government's borrowing will provide a sufficient corrective. On this point the view of this Government is that although intervention might perhaps be most usefully exercised before any question of borrowing arises, a power to intervene in the interests of financial stability would be so wide that it might be difficult to justify it. Perhaps the best guarantee of financial stability would be secured by a convention that the authority controlling borrowing (para. 54 below) should refuse to sanction loans designed to meet expenditure other than that of a true capital or productive nature.

## CHAPTER 2.—THE PROVINCIAL LEGISLATURE.

19. In dealing with this chapter of the Report I am to state in the first place those recommendations with which this Government agree and in regard to which they have no comments to make, and thereafter to deal with those proposals which do not admit of such summary disposal. This Government are prepared to accept the following proposals:—

- (1) That the normal statutory life of provincial legislatures should be extended to five years and that the Governor's power of extending this statutory period should be limited to the purpose indicated in para. 135 of the Report, namely, to bring the life of the council to an end at the same time as the life of the Federal Assembly.
- (2) That the size of the legislative councils should be increased. His Excellency's Ministers would prefer a council with a membership not exceeding 200. The other Members of Government would not object to the present membership being doubled.
- (3) That separate electorates for Europeans should be retained and that the present proportion between the number of European general seats and the number of Indian general seats should be maintained.



- (4) That the present proportion of Muslim representatives should be maintained.
- (5) That the official *bloc* should be removed and that the new Statute should make provision for the presence of officials, or other experts, without a right to vote, in committees of the legislature.
- (6) That no special arrangement should be made to secure the election of women members either by prescribing that a certain number of seats must be filled by women or by reserving seats for women, but that women candidates should be given "a fair field and no favour".
- (7) That if the Ministry includes non-elected members such Ministers should become *ex-officio* members of the legislature.

This Government also accept the proposal that subject to the safeguards recommended in para. 25 the legislative council should be empowered after a period of ten years to pass constitutional resolutions providing for changes in the arrangement of constituencies, in the franchise and methods of representation. His Excellency's Ministers think such resolutions should not apply to methods of representation (see extract C in the appendix). Their colleagues see no need for the exclusion of methods of representation provided that the "two-thirds" majority suggested by the Commission will be two-thirds of the actual number of members in each case and not two-thirds of the members voting. An obligation would of course fall on the Governor to exercise a discretion where the interests of a community represented by small numbers in the council were affected, such for instance as the European or Anglo-Indian community. But the proposals of the Commission make provision for the exercise of this discretion.

20. This Government also accept the Commission's proposals in regard to the representation of Anglo-Indians and commercial bodies with the slight modifications explained below. In the case of Anglo-Indians they would prefer to increase the representation in proportion to the increase in the total membership of the council. It seems undesirable to increase the number of European and Indian Christian seats in proportion to the increase in the total membership of the council and at the same time to leave Anglo-Indians with their existing repre-

presentation of only one member. In the case of the two commercial constituencies, on the other hand, they would retain the existing number of members. The commercial bodies represent an interest rather than a community, and the important thing is that the interest should have a means of voicing its views in the council. The three seats which are at present given are sufficient for this purpose and this Government see no need to increase them to six.

### *Communal representation.*

21. This Government are not concerned with the representation of Sikhs, non-Brahmins or Mahrattas, and in their consideration of this question of communal representation propose to confine themselves to the cases of Muslims, Indian Christians and depressed classes. They are in full agreement with the view of the Commission that the subject of communal representation is pre-eminently one which the rival communities should settle among themselves, but that in the absence of any new agreement between Hindus and Muslims communal representation for the latter community must be continued in this province for the present. The Commission have considered three different methods of securing such representation, namely, (1) by means of a system of reserved seats, (2) by means of a system of reserved seats combined with a system of previous selection of candidates by Muslim electors alone, and (3) by means of a system of proportional representation. They have rejected the first and third of these methods, and this Government agree with their view that the first would be entirely unacceptable to the Muslim community generally and that the third is at present impracticable. The Commission have suggested that the second method, called by them the system of "primaries", should be further considered by both communities to see if it provides a basis of agreement. This Government are not yet in a position to state what the views of the Muslim community generally are likely to be on this question, but I am to say that Nawab Sir Ahmad Sa'id Khan and all His Excellency's Ministers are opposed to the introduction of this system of election, and that this Government have reason to believe that that view would be endorsed by a majority of Muslims in this province. The Government as a whole accept the view that in the absence of agreement between

the two great communities separate Muslim electorates must be continued.

*Representation of depressed classes.*

22. At present the Governor nominates one member to represent classes which in his opinion are depressed classes. In his report to the Commission the Governor in Council recommended that in future the Governor should nominate five persons to represent depressed and backward classes. The Committee of the United Provinces legislative council agreed that representation of both these classes should be by nomination and recommended that the number of representatives should be fifteen. The Commission have gone far beyond these recommendations. They reject the system of nomination on the ground that it provides no opportunity for training these classes in politics. They also reject separate electorates on general grounds of principle and also on two special grounds, namely, (1) that exact definition would be difficult and (2) that such electorates are likely to militate against the rise of these classes in the social scale. They therefore propose that seats should be reserved in the non-Muslim constituencies to be filled by the votes of the non-Muslim general electorates, and that the Governor should be required to certify which candidates are authorized to seek election. They realize that difficulty may for some time be experienced in finding sufficient suitable candidates among the depressed classes themselves, and suggest that, if this difficulty does arise, the Governor should for ten years, and in respect of half the number of reserved seats only, have the power either (1) to allow other than members of such classes to stand for election on their behalf, or (2) to nominate such other persons to reserved seats. Finally, the Commission recommend that the number of reserved seats should be fixed on the following principle—the proportion of the number of reserved seats to the total number of seats in all the Indian general constituencies should be three-fourths of the proportion of the depressed class population to the total population of the electoral area of the province. The Government of India will not expect this Government at the present stage to enter into a detailed and exhaustive examination of this difficult question. The matter is one which will require careful investigation by the Franchise Committee which the Commission recommend. This Gov-

ernment therefore confine themselves to an expression of opinion on the main principles involved.

23. The Commission's proposal, as understood by this Government, would result in the return to the legislature of this province of about forty representatives of the depressed classes. The basis of this proposal is not the probable electoral strength of these classes but their total strength. The Commission have made no attempt to estimate their electoral strength. All that they say on this subject is that "there are, even with the present restricted franchise, a sufficient number of depressed class voters to make methods of election possible, at all events, in many areas". This Government have not the necessary information to enable them to say whether that statement is or is not accurate so far as this province is concerned. Their own opinion is that if the term "depressed classes" is defined with some strictness and held to include only the members of those castes which follow an occupation which is generally regarded as degrading, the number of persons belonging to those classes who are at present enfranchised will be found to be comparatively small. Even if the franchise be lowered, so long as the main qualification is the payment of rent for land or of land revenue, the number is likely to remain comparatively small, for the reason that the main occupation of these castes is not cultivation. Speculation in a matter of this kind is however useless and actual facts must be ascertained. The Governor in Council is not prepared to accept the proposal that the representation of these classes should be based on their total strength. This would give them a representation out of all proportion to their political importance. It is therefore essential to find out what the probable voting strength of these classes will be on whatever franchise is to be fixed for the general electorate—for there can be no question of a special franchise—and thereafter to consider what number of representatives can suitably be allotted. This Government propose therefore to initiate inquiries immediately so that they may have some material which they can put before the Franchise Committee and which may form a basis for their own proposals.

24. This Government also disagree with the Commission in regard to the method of election. They agree that it is desirable to introduce some system of election in place of nomination, but they dislike the proposal that the

election should be made by the non-Muslim electorate to a number of reserved seats. As explained in the extract which will be found in the appendix, from a note by Raja Bahadur Kushalpal Singh, this is not what the depressed class leaders themselves ask for, and it is not likely to satisfy them. The Commission themselves admit that separate electorates are more likely to secure the return of an adequate number of persons who enjoy the confidence of the depressed classes. That admission suggests the vital objection to their proposal, namely, that in the general non-Muslim constituencies the depressed class voters will be far out-numbered by the other voters and the members returned will be those who are supported by the majority of voters, as distinct from the depressed class voters. The Commission's proposal will not in fact give the depressed classes members who will be trusted by them to represent their special interests. The alternative is separate electorates. These no doubt have their own disadvantages, but if the initial difficulty of creating an electorate can be overcome, this Government consider that these classes should not, on a purely theoretical ground, be denied a privilege which has already been given to Muslims and Europeans and which it is proposed to give to Indian Christians and Anglo-Indians. The objection that such an electorate will involve stigmatizing each elector and will militate against his rise in the social scale is not one that is likely to weigh with those principally concerned, and if the representatives in the legislature must be stigmatized, and even the Commission's proposal involves this, there seems no reason why the voters should not be. It is at least arguable also that the position of these classes is more likely to be improved by securing real representation in the local legislature than by the ineffective form of representation suggested by the Commission. The real difficulty lies in forming an electorate. This Government are not at present prepared to say more on this point than that they propose to investigate the matter in the hope that they may be in a position to put concrete proposals for an electorate before the Franchise Committee.

*Indian Christian representation.*

25. The Indian Christian community is at present represented in this province by one nominated member. The Commission propose that representation should in

future be by election, they prefer a system of reservation of seats to separate electorates and they recommend that the number of representatives be increased from one to two. The total number of Indian Christians in this province at the census of 1921 was 169,000. The number of electors, even with the extended franchise, will therefore be comparatively small. No figures are at present available showing the distribution of Indian Christians among the various districts of the province, but it can be said with confidence that it will not be possible in this province to make a satisfactory arrangement whereby two seats will be reserved for Indian Christians. If nomination is to be substituted by election, then it seems practically inevitable that a separate electorate should be established. This Government have no objection to the increase in the number of representatives from one to two.

#### *University representation.*

26. The Commission obviously are not convinced of the desirability of retaining university representation and have confined themselves to a halting expression of opinion that the existing university seats should be retained. There is some division of opinion on this subject among the Members of this Government. His Excellency the Governor and the two Members of the Executive Council see no advantage in retaining the one university seat in this province. University members do not represent any special interests and the university electors undoubtedly receive adequate representation through the general constituencies. His Excellency's Ministers feel some difficulty in agreeing to the withdrawal of a privilege at present enjoyed. They would therefore prefer to retain the existing seat. They would not, however, confine it to the Allahabad University, but would either have a joint electorate formed from the three provincial universities of Allahabad, Lucknow and Agra, or in the alternative they would allow each university to elect the member in turn.

#### *Representation of labour.*

27. Labour at present receives no special representation in this province. The Commission recommend that the duty of drawing up rules for securing labour representation should be imposed on the Governor and they

would leave it to him to resort to nomination if he considers a system of election impossible. As regards the number of labour representatives, they content themselves with expressing the view that, if suitable members are available, the proportion of labour representation should be increased. The position in this province in regard to the representation of labour interests was fully explained in this Government's report to the Commission, and I am to say that this Government do not anticipate that a system of election will be possible. In the absence of any labour organizations which are capable of putting up a panel of candidates from whom selections could be made, this Government at present see no alternative to a system of nomination pure and simple, and they are prepared to accept the Commission's proposal which will probably result in the Governor nominating one or two labour representatives.

### *Representation of great landholders.*

28. The great landholders of this province have special electorates which return six members to the legislative council. On the ground that their standing and reputation and the influence which they exert in their own localities have enabled them to share a large number of seats in the general constituencies and are therefore such as to render special protection unnecessary, the Commission have, subject to a certain safeguard to secure them their present representation, recommended the withdrawal of their special representation. This Government are unable to endorse the Commission's recommendation. Though all the Members of Government hold the same views on the general principles involved, I am to refer the Government of India to the extracts E (i) and (ii), which will be found in the appendix, from notes by Nawab Sir Ahmad Sa'id Khan and His Excellency's Ministers. Government hold that the representation which the great landholders have been able to secure has not been disproportionate to their political importance in present conditions. It is almost inevitable that as the electorate gains political experience, it will tend to prefer representatives drawn from sources other than the great landed families, and the need for special representation is likely to increase rather than decrease. It is peculiarly unfortunate that the Commission have singled out this one class to be deprived of a privilege

at present enjoyed, while at the same time recommending the grant of special representation on a wider scale for some classes of little political importance and the retention of the special representation of another class—university graduates—to which the arguments used in the case of the landholders apply with even greater force. This Government are unanimously and strongly in favour of the retention of the special representation of the great landholders at the existing ratio, and the Governor in Council desires to repeat the recommendation placed before the Commission, which was that the number of representatives be increased to twelve, seven to be elected by Agra landholders, four by the Oudh taluqdars and one by the Oudh landholders other than taluqdars, and that all these representatives except the last be elected by proportional representation on the system of the single transferable vote. His Excellency's Ministers would go further and give the landholders sixteen representatives, as recommended by the Indian Central Committee, but, differing in this from that Committee, would allot ten seats to be filled by the Agra Province Zamindars' Association, five to be filled by the British Indian Association, and one by Oudh landholders other than taluqdars. I am to add also that the Ministers consider that similar bodies of equal status in other provinces should also return their own representatives by separate electorates to both chambers of the provincial councils and also to the Federal Assembly and the Council of State.

#### *Nominated members.*

29. The Commission propose that, apart from a power to nominate members representative of certain special classes where election is impossible or fails to give a specified amount of representation, the Governor should have a discretionary power of nomination which should be used particularly to ensure more adequate representation of women and labour. They would fix the number of members who may be nominated at between 5 and 10 per cent. of the total fixed seats. In a council of 250 this would give the Governor power to nominate between 12 and 25 members. Apart from officials the Governor in this province now has power to nominate only five members and of these three must be representatives of special interests. There are, in the opinion of the Governor in Council, obvious disadvantages in leaving the Governor so general



a power as the Commission propose. However defensible such a power is under the existing constitution, it will clearly become more and more anomalous as the constitution approaches one of complete responsible government. His Excellency in Council is therefore in favour of retaining the power of nomination only to a very restricted extent and in order to secure the representation of definite interests. He sees no reason to grant any special power of nominating women as such. If this Government's proposals in regard to the representation of great landholders are accepted, then there will be no need for nomination in their case. This Government also hope that it will be possible to secure the representation of Anglo-Indians, Indian Christians and depressed classes by election. The only special interest which it will not be possible to get represented by election is that of labour, and this Government have already agreed above to the nomination of one or two labour members. The Commission have said nothing about the nomination of expert members. This Government consider that the Governor should have the power at present conferred by proviso (b) to sub-section (2) of section 72-A of the Government of India Act to nominate not more than two persons having special knowledge or experience of the subject matter of any Bill which is before the legislature. Such persons would not necessarily be officials but might, to take one example, in the case of a Bill to regulate religious and charitable endowments, be persons who have had actual experience of the management of such endowments. This Government would also allow the Governor to nominate one person (who would generally be an official) to act as legal adviser to the Government and to assist in dealing with the drafting of Bills during their progress through select committees and the like. The Governor in Council would therefore prefer to restrict the Governor's power of nomination to the following three purposes:—

- (1) to secure representatives of labour interests,
- (2) to secure the assistance of experts, and
- (3) to secure the assistance of a legal adviser and draftsman.

His Excellency's Ministers would, however, have no objection to the Commission's proposal to give the Governor power to nominate members up to 5 or 10 per cent. of the

total membership, on the understanding that he would not be restricted to use this power to secure the representation of any special interests such as those of women or labour.

*Powers of legislation and finance.*

30. The special powers of the Governor in relation to legislation and finance have been dealt with in paras. 15 to 17 above. This Government accept the remaining proposals in regard to legislation and finance contained in paras. 96 to 98 of the Report.

CHAPTER 3.—THE FRANCHISE.

31. After referring to the variety of views held in India in regard to the extension of the franchise and to the way in which the views held by various classes and communities are influenced by the manner in which each such class or community is likely to be affected by extension, the Commission have rejected adult franchise as impracticable at the present stage and have recommended that a Franchise Committee should be appointed with instructions to frame schemes which would enfranchise about 10 per cent. of the total population. They have further suggested that a special literary qualification should be introduced and also a special qualification for wives and widows of persons qualified for the franchise. Finally, as a complement to their proposal that the legislative council should be permitted to revise the franchise by constitutional resolutions, they have recommended that after an interval of fifteen years a second Franchise Committee should be appointed to review progress and, if 20 per cent. of the population have not by then been enfranchised, to devise means to accelerate progress. The views of this Government on each of these proposals are explained in the following paragraphs.

*Proposals for extension.*

32. The Commission base their proposed extension of the franchise on the following grounds:—

- (1) That the existing franchise is too limited to provide the material from which to build an adequate scheme of representative government.
- (2) That many of those who are at present below the line of qualification are as fit to exercise the

vote as those who are above it, and, even if they do not ask for it, the vote must be regarded as an instrument of political education and as a source of political influence.

In this section of their Report the Commission have not referred to the size of constituencies. But they have done so in paras. 205 and 206 of volume I, and it would appear that one of the reasons which influenced them in proposing so large an extension of the franchise was that such an extension would render possible a reduction of the size of constituencies and a closer touch between members of the legislature and the voters who return them. Their ideas on this point are the outcome of their own experience derived from a country which is predominantly industrial. It may be questioned whether they apply with the same force to a country which is predominantly agricultural and in which 90 per cent. of the people live in an immense number of villages scattered over the country-side. For practical purposes it can make little difference in the relations between the member and his electors whether the constituency contains 2,000 villages or 1,000, and any reduction in the size of constituencies that is within the bounds of possibility is not going to make any real difference from this point of view, nor give either the member or voter a more accurate appreciation of the true meaning of representation. While therefore this Government are not opposed to some extension of the franchise in the hope that the vote may in time prove to be an instrument of political education and a source of political influence, they see no adequate reason for so large an immediate extension as that proposed by the Commission. This Government stated to the Commission that the great majority of the electorate in this province are not only illiterate but also ignorant of and without interest in the affairs of the province as a whole. They do not, however, deny that there is some force in the argument that many of those who are at present without the vote are as fit to exercise it as the majority of existing voters. It is therefore not unreasonable to extend the franchise to a considerable extent, but care must be taken not to make it so large as to place an undue strain on the polling machinery. This Government have not immediately available all the information which they would like to possess before expressing a considered opinion in regard to the extent to which the franchise can be widened, and for

that reason they desire to confine themselves to a provisional expression of opinion on this point. According to figures collected in 1920 the lowering of the principal rural qualifications to a payment of not less than Rs. 25 rent in the case of tenants and not less than Rs. 10 land revenue in the case of landholders will add about  $1\frac{1}{4}$  million to the rural electorate and thus double the number of persons enfranchised by virtue of rent or revenue paying qualifications. This Government are not at present disposed to recommend any larger extension than this. But they would agree to the lowering of the other rural qualifications and also of the urban qualifications, where this can suitably be done, to such a degree as to qualify roughly double the present number of electors. It may be objected that the increase thus proposed is only 100 per cent. instead of the 200 per cent. recommended by the Commission. The reply to that objection is, firstly, that, as already stated, the argument that smaller constituencies will bring member and voter into close touch does not apply to Indian conditions with the same force as it does to English conditions; secondly, that the franchise necessary to secure this Government's 100 per cent. increase will be approximately the same as that required for the Commission's higher increase with the exception of the special women's qualification which this Government for reasons given below are not prepared to accept; and, thirdly, that it would be unwise to lower the qualifications still further at the present stage.

### *Literary qualification.*

33. This Government are divided in their views on the proposed literary qualification. His Excellency the Governor and the Members of the Executive Council are opposed to this innovation. His Excellency's Ministers accept the principle of the Commission's proposal, but two of them would prefer that the actual qualification should be somewhat different. Hitherto the main principle of the franchise has been based on some property qualification, and until it is shown that it is impossible to retain that principle and at the same time widen the franchise to the extent desirable, the Governor in Council would prefer to have no purely literary qualification. The Commission suggest two reasons in support of their proposal, namely, that it would bring in voters of better education, and that it would provide for an increase in the number of electors

in proportion to the spread of education. In reply to these reasons it can be argued that the test proposed is so low that it will not bring in really educated men and that the majority of men who are educated have, and in future may be expected to continue to have, a property qualification of some kind or other. It is, however, true that the present qualifications disfranchise many members of joint Hindu families, and for this, as well as for general reasons, the Ministers would like to see a literary qualification introduced. Nawab Muhammad Yusuf and Maharaj Kumar Mahijit Singh would extend the franchise to those who have passed the matriculation or other equivalent examination or a recognized proficiency examination in a vernacular or classical language. Raja Bahadur Kushalpal Singh would accept the qualification proposed by the Commission.

*Special qualification for women.*

34. The Commission have expressed considerable concern at the small number of women who are enfranchised and a desire to see a substantial increase in the present ratio of women to men voters. In order to effect this they have suggested that it may be found possible to add to the present qualifications two others, namely, (i) being the wife, over 25 years of age, of a man who has a property qualification to vote, and (ii) being a widow over that age whose husband at the time of his death was so qualified. In addition they would apply their proposed educational qualification to women over 21 years of age as well as to men. These proposals are of a far-reaching nature and must be considered in relation to existing facts. In this province the great majority of the voters are ignorant and illiterate villagers. Whatever can be said of their competency as voters it can hardly be questioned that the wives of most of them are even more ignorant and illiterate and that many of those who are of a better status would be prevented by social customs from exercising the vote. The practical result of the proposal would indeed be to give to the low caste Hindu voter, whose wife is able to go to the poll, a second vote and thus give him twice the voting power of many of the higher caste Hindus and also of many of the Muslims. In the opinion of this Government the means of extending the women's franchise can best be left to be dealt with by the people themselves under the powers which it is proposed to grant to the new legislative councils.

*Election expenses.*

35. The Commission recommend that suitable limits should be defined and enforced for election outlay. The existing electoral rules for this province require every candidate to make a return of his election expenses under certain specified heads, but they lay down no limits and it is well known that these returns afford no true indication of the actual expenditure incurred by candidates. The Commission consider that the absence of limits gives an unfair advantage to candidates who can afford to spend freely and is an obvious encouragement to corruption. It is notorious that some candidates have spent very large sums on elections and that much of such expenditure has been of a nature which might be described as illegal. As regards legitimate expenditure the position is that there is undoubtedly room for a considerable increase in expenditure on such matters as election literature, meetings, canvassing, etc., and Government have not at present sufficient material on which to base proposals for the imposition of limits. This Government, therefore, consider that further experience should be awaited before any attempt is made to impose such limits.

## CHAPTER 4.—SECOND CHAMBERS.

36. The Commission were not able to agree on the subject of second chambers in the provinces. Three provincial Government have approved and five opposed the establishment of such chambers. The Indian Central Committee, while opposing the introduction of second chambers generally, have recommended the creation of such a chamber in this province tentatively for a period of ten years. The United Provinces Provincial Committee unanimously recommended the creation of a second chamber in this province. The question is therefore one on which there is considerable difference of opinion. The Members of this Government are however unanimously in favour of the establishment of a second chamber in this province. Nawab Sir Ahmad Sa'id Khan and His Excellency's Ministers have recorded separate notes in favour of the proposal from which extracts will be found in the appendix. The following are the grounds on which the proposal can be justified :—

- (1) The natural development of the provincial constitution will result in an increasing restriction of

the special powers of the Governor until these powers ultimately disappear. So long as these powers remain there may not be a complete case for the establishment of a second chamber, but with the gradual disappearance of these powers the case will become increasingly strong. It is clearly undesirable to wait until the Governor's powers have completely disappeared before creating such a chamber, as the result of this would be that minority communities might be deprived of the protection of the Governor before being given any other form of protection. Furthermore, the whole principle of the new constitution, as proposed by the Commission, is that its future development should be natural and gradual and not by well-defined stages. There is thus no future revision of the constitution in contemplation at which the introduction of a second chamber might be further considered. It is therefore desirable that such a chamber should be created now when the constitution is under revision.

- (2) A second chamber may in certain circumstances obviate the use of the Governor's special powers. In so far as it does so, the extent of the autonomy enjoyed by the province will be increased and the position of the Governor will at the same time be strengthened. The more the Governor is able to keep himself outside of the government machine and the more he can avoid intervention the stronger will his constitutional position become and the more effective his intervention when the need for it arises.
- (3) A wide extension of the franchise is likely to cause a very natural apprehension among those who have a large stake in the affairs of the province and with whom in the past has lain the predominant share of political power. These classes fear that they will not be able to obtain adequate representation in future conditions. It is important for the welfare of the province that the legitimate interests of these classes should be protected and that they should have a feeling of security and of confidence in the

administration. The establishment of a second chamber may not achieve all that they expect of it, but it will, in the opinion of this Government, be a stabilizing influence and assist in securing general confidence in the new constitution.

Another point which, if not exactly a reason for introducing a second chamber, is an important practical consideration is that there are in this province classes from which such a chamber can suitably be constituted. The exact constitution of the chamber must be left for future consideration, but the provisional view of this Government is that the chamber should have a total membership not exceeding 50 and should contain a majority of elected members who should be directly elected on a high franchise. The same communal proportions would be applied to the upper as to the lower chamber. In the opinion of the Governor in Council there should be no representation of special interests, for example, great landholders or commercial bodies, in the second chamber but His Excellency's Ministers would give special representation to great landholders. No official element will be possible as it would obviously be impracticable to allow officials freedom of vote, and if the upper chamber is to exercise a moderating influence, the presence of officials voting in accordance with the views of Ministers would not help to achieve this object. The relations between the two Houses should be those at present existing between the two Houses of the Indian legislature. It will be desirable that the upper House should be represented in the Ministry and this Government hope that if such a House is created the Governor will always find it possible to secure to it some representation in the Ministry, though they do not consider that it would be possible to make any statutory provision to this end.

*Expert revising body.*

37. This Government would like to have had before them a fuller exposition of the exact composition and functions of the small expert body which the Commission suggest should be created "to report on the final drafting of measures and to call attention to any points of conflict with existing legislative or administrative arrangements". They agree that there is much room for improvement in the framing of provincial legislation and also that there is need for the better understanding of the exact implications of



legislation by the members of the legislature. But they are of opinion that what is really required to secure better drafting is that the provincial Government should have a trained draftsman who would not only make the initial drafts of Bills but would also be a member of the legislature and thus available to follow every stage of the Bill in its progress through the legislature. To secure the second object which the Commission appear to have had in mind expert knowledge of administration rather than of drafting would seem to be required, and the presence of experts on select committees, suggested by the Commission in para. 86, might, be made use of to bring out the real effect of proposed legislation and the administrative considerations involved by its passage.

## PART IV.

### CHAPTER 1.—THE CENTRAL LEGISLATURE.

38. No part of the Commission's scheme involves a more radical departure from existing arrangements than their proposals for the constitution of the Lower House of the Central Legislature. Put briefly, these proposals are that that House should be called the Federal Assembly, should have a fixed life of five years, and should be composed of from 250 to 280 members as follows:—

- (1) the members of the Governor-General's Executive Council *ex-officio*,
- (2) not more than twelve other official members nominated by the Governor-General,
- (3) members elected on a system of proportional representation by the legislative councils of Governors' provinces, each council electing approximately one member for every million inhabitants of the province,
- (4) eight members elected or nominated to represent minor provinces, and
- (5) eleven members nominated by the Governor-General to represent backward tracts, and possibly two to represent Anglo-Indians.

This Government agree with the proposals that the Assembly should have a fixed life of five years and that the representation of each province should be determined on the basis of population. In regard to other points in the

scheme proposed by the Commission there is some difference of opinion. Nawab Sir Ahmad Sa'id Khan and His Excellency's Ministers approve of the increase in the membership of the Assembly to 250 or thereabouts. But His Excellency Sir Malcolm Hailey and Sir George Lambert are unable to find in an Assembly of the size suggested, with an official representation amounting to twelve nominated official members, any promise of that stable Central Government which the Commission predicated (Report, para. 178) nor any recognition of the fact that "it is on the strength of the central administration that the peace and safety of India ultimately depend" (para. 29). The picture which they see is that of an executive which must inevitably be in a position of pathetic impotence within the legislature, and a legislature which is bound to be in perpetual quest of means to reduce and, if possible, to nullify the authority of the executive. So far from gaining in strength or stability by the change proposed, the central administration will occupy a position inferior to the markedly unfavourable situation in which it stands at present. It may be that the Commission felt the difficulty of giving it the position which on their own showing it ought to occupy, but the reasons advanced for advocating a change which must involve a worsening of that position are entirely unconvincing. When we are told that it is desirable to provide at least one member for each million inhabitants, the reply can only be that this number itself is already in the region of the astronomical, and there is no greater reality of representation if the figure is fixed at one million than if it is fixed at two million. The Commission are once again obsessed by the fallacies of an analogy drawn from a compact area closely inhabited by a people largely of an urban and industrial character. In regard to the system of election this Government are also unable to make a joint recommendation. His Excellency Sir Malcolm Hailey adheres to the view taken by him as a member of the Franchise Committee, now strengthened by ten years experience of the existing system both as a Member of the Government of India and as the Governor of two separate provinces, that election should, as proposed by the Commission and for the reason given by them, be indirect. Under the existing system of direct election the members of the Assembly may have illustrated types of Indian opinion, but they have not reflected the views held by majority parties in the provincial legislatures. In a federal constitution it

is imperative that the provincial representatives should be made to realize that they sit in the Federal Assembly solely to represent the interests of their provinces and there is much more hope of this end being achieved by indirect rather than by direct election. Sir George Lambert shares this view. Nawab Sir Ahmad Sa'id Khan has no personal objection to indirect election, but feels that it is strongly opposed to Indian sentiment. The views of His Excellency's Ministers are explained in extract G in the appendix. They would prefer a system of direct election; but they recognize the force of the Commission's arguments against such a system in a federal constitution and, if a system of indirect election is considered inevitable, they would like to give it a broader basis than the Commission propose.

39. If the system of direct election is retained, the existing system of communal representation must also be retained. If a system of indirect election is introduced then proportional representation becomes a possible alternative to the communal system. The arguments advanced in favour of proportional representation is that it is likely to secure to the principal minority communities an adequate share of representation without placing an open emphasis on religious or racial differences. All the provincial representatives will be answerable to the same constituents, and they may thus be expected to have a feeling of unity which communal representation cannot give. Those who are opposed to the system argue that it is uncertain in its results and that it will not really mitigate religious and racial animosities, since each group in the provincial legislature will necessarily give their first votes for their own men. There is a real fear among Muslims that the system will not secure to them what they consider to be their due share of representation. A further disadvantage of the system is the difficulty of filling up casual vacancies. Nomination by the Governor is not a method which this Government could accept and it would be difficult to devise any system of election which would not be open to objection on one ground or other. This Government are therefore inclined to the view that the advantages of the system are not sufficient to outweigh its disadvantages and that on the whole it is preferable to retain the existing well-tried system of communal representation.

40. There are two further matters on which this Government disagree with the Commission's proposals.

The first is the suggestion that it will be possible for an individual to retain membership of both the Federal Assembly and the provincial council. If the two bodies always met at different times there would be no objection to such dual membership. But it has been customary for the Legislative Assembly and most of the provincial councils to hold their most important session about the same time, namely, in February and March. As that is the most suitable time for the introduction and discussion of the budget, it seems likely that the central and provincial legislatures will continue to meet during these months. In these circumstances it will not be possible for any individual to discharge in a satisfactory manner the duties of membership of both the Assembly and a provincial council, and this Government consider that any individual elected to both bodies should be required to resign from one or the other. The second matter is the proposal that the allowances of provincial representatives in the Federal Assembly should be a charge on provincial revenues. This Government are not aware of any justification for this proposal. The Federal Assembly will be a central body, the Governor-General will regulate its sessions and the Government of India should bear all expenses connected with them.

### *The Council of State.*

41. Though they consider that the Council of State will in theory be something of an anomaly in the constitution which they have proposed, the Commission recommend its retention on practical grounds. They would also retain the present number of members (60) and the present proportions of elected to non-elected members (33 to 27). They would extend the life of the Council to seven years and for the present system of direct election would substitute an indirect one. They make only very tentative suggestions as to the exact composition of the Council and the qualifications for membership. This Government agree that the Council should be retained with a membership of about the present number and also that its period of life should be extended to seven years. They disagree with the Commission in regard to the method of election. They do not consider that in the case of the Council of State there are the same reasons for indirect election as there are in the case of the Assembly, and even though they are in favour of a second chamber in this province they would prefer a system of

direct election to the Council of State to one of indirect election by the members of the provincial second chamber. Although the constituencies must, as at present, be large in area, the electorate will be small and it will not be difficult for members to keep in touch with their electors. Direct election to the Council of State has not been unsuccessful and there are not sufficient reasons for making a change. But this Government would extend the franchise by including all persons paying not less than Rs. 3,000 (instead of Rs. 5,000) land revenue as at present. The Ministers would also like to see the large landholders in this and other provinces given special representation.

### *Powers of the legislature.*

42. The Commission do not recommend any immediate change in the legislative powers of the central legislature, though they contemplate that as the constitution develops there will be a gradual change in the range of its duties. This Government agree generally with the view taken by the Commission, but desire to make some suggestions in regard to the treatment of measures affecting social and religious usages. The first suggestion is designed to give to provinces a somewhat larger measure of autonomy in regard to such legislation. The Commission anticipate that legislation which affects British India only—and measures affecting religious and social usages will fall within this category—will tend to be left more and more to the provincial legislatures, but they also suggest that a more extended use should be made of enabling Statutes which would be passed by the central legislature and be subject to adoption by provincial legislatures. This Government hope that the Commission's anticipations will prove correct, but they themselves would like to suggest that provincial legislatures should be given a larger measure of control over legislation affecting religious and social usages by being given the power of requiring by resolution that any such legislation under consideration in the Federal Assembly shall be purely enabling so far as individual provinces are concerned. This would give the provincial legislature power to prevent a Statute which it considered unsuitable to the conditions of its own province from being applied to that province. Provision would have to be made for securing that such a resolution would have effect only in cases in which the proposed legislation actually affected religious

and social usages, and the most convenient method would be the grant of a statutory power to the Governor-General to make a declaration to this effect. It would be of further advantage from the provincial point of view if enabling Statutes could be so drawn as to permit a local legislature to adopt them with such modifications as might be required to suit the particular conditions of its own province.

43. The Commission have been unable to devise any statutory protection for minorities against discriminatory legislation and have come to the conclusion that the only practical means of providing safeguards is to retain an impartial power in the hands of the Governor-General and Governor and to give these authorities a specific mandate to use that power in all proper cases. This Government have sought for a more satisfactory conclusion but without success. They have a strong preference for some statutory provision which would make it possible for the representatives of any main community by a two-thirds majority to prevent the passage of legislation detrimentally affecting the community. But they appreciate the difficulty of making any such provision, and if this difficulty is found to be insuperable then they agree that the only alternative is to leave the safeguards in the hands of the Governor-General and Governors. In that case the safeguards would in their opinion be made more effective if—

- (1) the terms of section 67 (2) (b) of the Government of India Act could be widened so as to include social as well as purely religious usages,
- (2) a provision similar to section 67 (2) (b) could be introduced requiring the previous sanction of the Governor in the case of legislation in Governors' provinces, and
- (3) the Governor-General or a Governor should, when approached by any community to do so, be required to give a formal decision whether any Bill does or does not affect the religion or religious or social usages of the community and to pronounce his decision under the power held by him by virtue of (2) above. The Governor-General, or the Governor, should be authorized to require that, as evidence of the desire of the community for a decision on this question, the memorial should be signed by two-thirds of its representatives in the central or provincial legis-

lature or to prescribe any other test which he considered suitable.

44. The powers of the central legislature in relation to provincial finance are dealt with in a later part of this letter. This Government desire to say nothing on the Commission's proposals relating to the other financial powers of the central legislature.

## CHAPTER 2.—THE GOVERNOR-GENERAL IN COUNCIL.

45. The Government of India have not asked this Government for any expression of opinion in regard to the constitution of the Central Executive; and the members of Government do not therefore state their views on this question. I am, however, to invite a reference in this connection to the request put forward in para. 2 of this letter.

## CHAPTER 4.—RELATIONS BETWEEN CENTRE AND PROVINCES.

46. The question of financial relations between the centre and the provinces will be considered in the later section of this letter dealing with Part VIII of the Report. In this section I am to deal only with proposals in regard to the control over Governors in the exercise of their special powers and the control over provincial Governments in respect of those matters in which a provincial Government is held by Statute to be subject to superintendence and direction by the Central Government. This Government agree with the Commission that there must be some authority empowered to control Governors in the exercise of their special powers. The Governor will exercise these powers as the agent of Parliament, and so long as the Governor-General in Council is also the agent of Parliament, it might perhaps be held that in theory there would be no constitutional impropriety in the control being vested in the Governor-General in Council. But there are practical objections to this arrangement and the Commission have preferred to take the long view and to anticipate a change in the position of the Governor-General in Council by vesting this power in the Governor-General, who not only is, but must always remain, subject to the control of Parliament through the Secretary of State. This Government accept the Commission's proposal.

47. Under the existing constitution, while the Government of India and the Secretary of State have an unfettered

power of control over the administration of reserved provincial subjects, their power in regard to transferred subjects is strictly defined and limited by rule. Under the Relaxation of Control Rules the power of the Secretary of State and the Secretary of State in Council is limited to five purposes, namely,—

- (i) safeguarding the administration of central subjects;
- (ii) deciding disputes between two provinces;
- (iii) safeguarding Imperial interests;
- (iv) determining the position of the Government of India on questions arising between India and other parts of the Empire; and
- (v) safeguarding the due exercise and performance of certain powers vested in the Secretary of State in Council by Statute or Statutory rules.

Under Devolution Rule 49 the power of control of the Governor-General in Council is limited to the first, second and fifth of these purposes. In addition, however, the Government of India have under sub-section (1) of Section 45 of the Government of India Act and Devolution Rule 5 a right to require from local Governments information on the administration of any provincial subject, and under the Local Government (Borrowing) Rules the power to control the issue of loans by provincial Governments. The proposal of the Commission is that the Governor-General in Council should have as wide a power of control as the Secretary of State, though he would, of course, exercise it subject to the Secretary of State's control, and that that power should extend to the purposes nos. (i), (iii), (iv) and (v) above for which the Secretary of State can at present exercise his power, the supply of information, the raising of loans, and in addition the following two purposes, one of which is an extension of an existing purpose and the second is new—(a) regulating matters which may, in the opinion of the Governor-General, essentially affect the interests of any other part of India and (b) implementing international obligations. Subject to the limitations explained below this Government accept the Commission's proposals, though they would suggest that there will be some advantage if in drafting the Statute the number of separate categories is reduced as far as possible.



(i) At present the Government of India can exercise control over a provincial Government in relation to a transferred subject in order to decide questions arising between two provinces in cases where the provinces concerned are unable to agree. The Commission have explained at some length why they do not consider that that rule goes far enough. It does not give the Central Government any power to secure co-operation between the provinces in matters which are of vital concern to more than one part of India. Furthermore, it has been authoritatively held that under the existing rules it is not permissible to incur expenditure from central revenues on any provincial subject, except in so far as the expenditure represents payment for services rendered. That there is scope for co-operation, specially in such matters as Public health and Medical administration, admits of no reasonable doubt. But the method of securing co-operation is not free from difficulty. There is strong objection to the extension of the power of control by the Government of India in regard to the transferred subjects. There is a natural desire that the provinces should be as free as possible from central control. This Government, being satisfied that some further power of control is likely to be in the best interests of the province and realizing that over the whole field of administration the controlling power of the Central Government is being greatly reduced, are prepared to accept the principle of the Commission's proposal, subject to the understanding that the Government of India will be restricted to use their powers principally for the purpose of collecting information, giving advice, and settling a common policy, and not for the purpose of interfering in the actual details of administration in any province. In particular the Government of India should not use the system of grants-in-aid to secure control in provincial matters. The action taken in regard to the distribution of the proceeds of the petrol tax may perhaps reflect the desire of the Legislative Assembly rather than that of the Government of India to utilize the system of grants to effect control, but it has already created some apprehensions in provincial quarters. There are also indications of the same tendency in the proceedings of the Central Board of Agriculture.

(ii) It should be made clear that the Government of India's powers in relation to the all-India services should be restricted to control over the strength of the cadre to be employed in a province, and should not extend to such

matters as transfers, promotions, etc., though there would be a right of appeal to the Government of India in certain service matters prescribed by statutory rule.

48. The Commission have proposed an important alteration in the present classification of central and provincial subjects so as to secure to the Central Government some control over the organization of the Criminal Intelligence Department in the provinces. As this Government understand the proposal the provincial Government would continue to control and pay for the C. I. D. but the Central Government would have the power to require it to maintain an organization which would fit into and co-operate with the Central Intelligence Department. His Excellency the Governor and Sir George Lambert agree that the Government of India should have some control, but they feel some hesitation on the subject since they anticipate that if it is expressed in the terms suggested by the Commission a provincial Government would, if it so desired, have little difficulty in rendering it nugatory. The other members of Government take the view that the C. I. D. is so essential a part of the machinery of Government that no Ministry will wish to reduce its efficiency and therefore no central power of control is required.

## PART VIII.

### FINANCE.

49. The Commission have observed (para. 158) that many of the suggestions contained in Sir Walter Layton's report go somewhat beyond the range of their constitutional inquiry. They have therefore confined themselves to an expression of opinion on the more strictly constitutional features of the proposals, and have withheld any opinion on such matters as the estimates of future revenue and the suggestions for fresh taxation. This Government may be expected to go somewhat further than the Commission in this matter, as they are concerned not only with the general suitability of the proposals from a constitutional point of view but also with their practical effect on the finances of this province during the next stage of constitutional development. For this reason I am to deal first with the constitutional aspect of Sir Walter Layton's scheme and thereafter with its practical application to the province.

50. The basis of the proposals can be summed up in the following propositions :—

- (i) there is no prospect of existing provincial revenues expanding sufficiently to meet necessary expenditure within the next ten years;
- (ii) the Central Government possess all the expanding sources of revenue and central expenditure should be capable of gradual reduction so as to leave a substantial surplus which will be available for meeting provincial needs;
- (iii) the surplus so obtained will not be sufficient to meet all provincial needs and must be supplemented by new taxation which should be uniform all over India and centrally collected, but the responsibility of imposing which must rest on the representatives of the provincial legislatures; and
- (iv) the distribution of the revenues to the provinces should be made partly on the basis of origin and partly on that of population.

This Government are prepared to give general acceptance to the first and the last two of these propositions. They are fully satisfied that the existing revenues of this province are not capable of sufficient expansion to meet necessary expenditure within the next ten years. They see little possibility of raising any substantial amount of fresh taxation on a provincial basis and they welcome the suggestion of central taxation and agree that the distribution of its proceeds partly according to origin and partly according to population will be as fair a method of distribution as can be devised. They particularly desire to emphasize the point that the method of distribution must rest on some such automatic basis as is afforded by figures of population; they are entirely averse from any method of distribution based on presumed needs or on standards of expenditure previously adopted in regulating provincial expenditure. While they agree with Sir Walter Layton that the Government of India possess the expanding sources of revenue, this Government can naturally express no opinion on the ability of that Government so to reduce expenditure as to leave a substantial amount available for transfer to the provinces.

51. The proposed method of allocating the Government of India's surplus gives rise to no difficulty. One half of

income-tax on personal incomes will be credited to the province in which it is collected and the proceeds of the salt tax will be credited to provinces on the basis of population. The introduction of this arrangement will be more difficult. This Government realize that the Government of India are not likely to be in a position to surrender a large amount of revenue immediately on the introduction of the Reforms and that the transfer will have to be gradual. All that they would ask for is that as much as possible should be given to the provinces as soon as possible and that as accurate an estimate as possible should be provided as to the amount that the provinces will get each year so that they may know where they stand and be able to budget accordingly.

52. The supplementary method of increasing provincial resources is more complicated. The proposal is that new taxation should be imposed and collected centrally and should be distributed on a basis of origin or population according to the nature of the tax. We are not here concerned with the nature of the proposed taxation—that will be considered later—but only with the machinery for its imposition. The proposal made by Sir Walter Layton and endorsed by the Commission is that a Provincial Fund should be instituted which will be fed by the proceeds of the new taxes. These new taxes will be voted by a Federal Assembly representing provincial units and sitting in special session and they will be collected centrally. A demand for such new taxation will be laid before the Federal Assembly in the form of a Bill by the Finance Member of the Government of India after the Finance Ministers of at least three provinces have at an inter-provincial conference asked for the taxation. The Finance Member of the Government of India, although responsible for introducing the necessary legislation, will not be bound to support it and may even oppose it. The Finance Ministers of the provinces will have the right to speak in the Assembly either in support of or in opposition to the Bill. The Federal Assembly's vote in a special session will then be decisive. These proposals may perhaps be open to criticism on theoretical grounds. An accepted principle of taxation is that no government should take from the taxpayer more money than it actually requires for public purposes. Under this scheme, however, if a single province happens to require additional funds and can induce, say, the Finance Ministers of two other provinces to support it in the inter-provincial conference and a majority of

members to support it in the Federal Assembly, then a tax will be imposed on the whole of British India. The force of this objection is no doubt weakened by the practical consideration that, during the next ten years at least, there will be few, if any, provinces that will not require all the additional funds that they can secure. The procedure in the Federal Assembly is also open to criticism. The spectacle of the Finance Minister of one province opposing in open assembly a tax desired by the Finance Minister of another province would not be altogether edifying, particularly if the Ministers concerned belonged to different parties. The party in power in one province might well be in opposition in another and the effect of a decision in the Federal Assembly going against the party in power in a province would obviously have the unfortunate effect of strengthening the Opposition in that province. A further objection, and this time of a practical nature, is that it will be very difficult, if not impossible, to avoid the disclosure of new taxation imposed by this procedure long before the time when the necessary legislation is actually introduced in the legislature. While pointing out these objections, this Government do not suggest that they are decisive. They believe that in practice the need of all provinces for additional resources will be so keenly felt for some time to come that there is no possibility of taxation being imposed in excess of the needs of any province. At the same time the objections to the scheme would be lessened if an absolute majority of Ministers in the inter-provincial conference was required before legislation for the imposition of any new tax was placed before the Federal Assembly. This would have the advantage of precluding any effective opposition in the Assembly, though it may be urged against it that it would make it harder for any individual province to obtain additional funds.

53. I am now to make some observations on the practical application of the Layton scheme. It will be admitted that its author has taken an unduly optimistic view not only of the probable surplus in central revenues but also of the possibility of new taxation. The surplus will depend on a number of uncertain factors of which trade conditions, foreign relations and the internal political situation are all of first importance. All that can be said with any certainty is that given favourable conditions, a moderate expansion of the proceeds of existing taxation can be relied on, and that, if the Government of India can secure some reduction

of expenditure, there will be a certain surplus for allocation to the provinces. It is possible to be somewhat more definite in regard to some of the proposed new taxes, particularly the tax on agricultural incomes and the terminal tax. Nawab Sir Ahmad Sa'id Khan in his separate note (extract I in the appendix) has given expression to the very strong feeling among the land-holding class in this province against the proposal to tax agricultural incomes. Landholders already feel with justice that the burden which falls on them in the shape of land revenue (and it is impossible now-a-days to persuade those affected to regard this otherwise than as a tax) is out of proportion to that which is borne by the commercial and industrial tax-payers. It is not necessary to recite here all the arguments against the tax; it is enough to say that the proposal is one that is full of difficulties and this Government would not be prepared to support it; they in any case consider that this form of taxation should certainly not be imposed on this province by the Government of India on the vote of the central legislature. It is eminently a form of taxation which should only be imposed by a responsible government on the vote of the provincial legislature. The terminal tax is objectionable on other grounds and this Government regard it as wholly impracticable. Such a tax is at present a source of municipal revenue to many towns in this province and is much more suitable as a municipal than as a provincial tax. This Government see no serious objection to Sir Walter Layton's other proposals for new taxation. They are not in a position at present to give any estimate of the extent to which the proposals taken as a whole are likely in practice to benefit the revenues of this province. The preparation of such an estimate will require information which is not in the possession of this Government. I am, however, to remind the Government of India that the lack of sufficient resources has been a very serious handicap to practically all provincial Governments since the introduction of the first stage of the Reforms in 1921, and to say that this Government endorse the Commission's observation that it is vital to the success of the next stage in the development of Indian self-government that the provinces should command adequate resources.

### *Borrowing.*

54. Sir Walter Layton's proposals can be summarized as follows:—Provincial loans must be subject to standard

regulations. The raising of such loans must be co-ordinated. For this purpose a provincial loan council consisting of the Finance Member of the Government of India and the Finance Members of the provinces should be constituted. This council would establish a borrowing programme, prescribe standard regulations and generally be responsible for advising on all matters relating to the service of debt. At first this council would be purely advisory, though Sir Walter Layton contemplates that it would ultimately become an independent body with full powers. The Commission deal with these proposals in para. 189 of their Report, but it is not clear to what extent they endorse them. They make no mention of the provincial loan council and merely state that "certain corrective powers should reside in the Central Government through a right to control borrowings by the provincial Governments", while they add that "the Central Government should be in a position either to refuse a loan required by a province to meet a deficit or if need be to impose discriminatory rates of interest in respect of any such loans as it grants". The construction which this Government put on the Commission's observations is that they propose to maintain the present arrangement and either do not approve of the proposed council or else regard it as a purely advisory body with no constitutional powers beyond advice. If that construction is correct, then this Government prefer the proposal of the Commission to that of Sir Walter Layton. They recognize the need for an authority to control and co-ordinate provincial borrowings, but they would prefer that that authority should be the Government of India, as at present, rather than a loan council constituted as proposed by Sir Walter Layton. If such a council were created then the borrowing proposals of any single province would be judged by a body composed of its own rivals in the money market. In theory this body would be purely advisory, but in practice the Government of India would find it very difficult, if not impossible, to reject its advice. The result might well be that the council might so use its power as to prejudice the interest of those provinces which possess no local money market of their own. It is again inadvisable that loan programmes should be discussed in circumstances which make secrecy difficult, if not impossible. There must be a controlling and co-ordinating authority, but that authority should be independent of all provinces and not a body composed of persons who have, either directly or

indirectly, an interest in the proposals which come before it. Such a body ought also to have not merely advisory but real powers, since the only other authority whose voice could be decisive in the matters dealt with by the council, namely, the Government of India, is itself a potential competitor with the provinces. It is probably impossible at the present stage of political development to constitute such a body, and in all the circumstances this Government would be quite content to leave the Government of India the power of controlling provincial borrowings to the extent described by the Commission in para. 189.

### *Provincial balances.*

55. This Government agree with Sir Walter Layton's proposal that the present arrangements in regard to provincial balances should be maintained. Sir Walter has further suggested that the Government of India should perform banking services for the provinces on a commercial basis and should not attempt to make undue profits out of the business for the benefit of the central budget. This Government readily endorse this suggestion and express the hope that if the proposal is finally accepted they will be consulted in regard to the services rendered to the Government of India at treasuries and sub-treasuries and in regard to the other details which will have to be taken into consideration in evaluating the gain which accrues to the Government of India from the provincial balances.

## PART IX.

### THE FUTURE OF THE SERVICES.

56 There are at present four purely civil services in this province which are still recruited on an all-India basis, namely, the Indian Civil, the Indian Police and the Indian Forest Services and the Indian Service of Engineers (Irrigation Branch). The first question for consideration is whether any of these services should continue to be recruited as an all-India service. The Commission have made no final recommendation in regard to the two latter services, but have recommended that recruitment for the Indian Civil and Indian Police Services should continue to be made by the Secretary of State. The three reasons given for this



decision are (1) that this is the only means by which the best class of recruits will be obtained, (2) that the ultimate responsibility for the preservation of peace and order is to rest with the Governor, and (3) that the retention of these all-India services will facilitate the staffing of central posts. This Government agree with the Commission's recommendation. In their opinion all considerations point to the continued need for the recruitment of Europeans to these two services and the necessity of getting the best Europeans available. They agree with the Commission that the present proportions of European and Indian recruitment should be retained in each of these two services. In the case of the Indian Civil Service one half and in that of the Indian Police Service over three-fifths of the total direct recruitment is still European, and it is advisable that this recruitment for both services should be made by the authority that can be relied on to get the best class of European recruit. That authority is undoubtedly the Secretary of State, who is in close touch with the sources of supply. This Government therefore approve of the retention of the two services on an all-India basis and of the continuance of recruitment by the Secretary of State. I am, however, to say that Nawab Sir Ahmad Sa'id Khan (see extract K in the appendix) would prefer that while the all-India nature of the services is retained recruitment should be placed in the hands of the Government of India. He is not convinced that that Government will not be able to attract the present class of European recruit, and he feels that it will be in keeping with other constitutional developments to transfer recruitment from an authority in England to an authority in India. His reasons for not going further and recommending the provincialization of both services are that he is advised that it will be difficult to obtain European recruits of a suitable class for a provincial service and that he considers that the retention of the cadre on an all-India basis will facilitate the staffing of posts under the Central Government. I am also to add that this Government contemplate that the strength of these two security services will come under review from time to time as the constitutional situation develops; their present recommendation does not involve the assumption that it will be necessary to retain either service permanently. Furthermore, they assume that the provincial Governments will retain their present powers in regard to the posting, promotion, etc., of officers of these services and that the powers

of the Government of India will, in addition to appellate powers, be confined to determining the number of officers of the services to be employed in a particular province at any time.

57. The position of the Forest and Irrigation Service differs from that of the two security services. This Government agree with the Commission that some advantage would be derived by retaining these services as all-India services, but they do not consider that the advantage is sufficient in this case to outweigh the objections which will be felt on constitutional grounds. The main question of forest administration in the future will be the preservation of the forests. That is mainly a question of policy which will be determined by the provincial Government, and no service, however constituted, will be able to conserve the very valuable property which this province possesses in its forests except in pursuance of a definite policy of the local Government. On the other hand, there is no reason to suppose that given a wise policy of forest conservation a provincialized service will not be able to carry it out with a reasonable degree of efficiency. Irrigation affects the interests of the people more intimately and has more affinity to a security service. There is perhaps no department of Government in which a high standard of efficiency and impartiality is of greater importance to a vast number of the rural population. The existence of a European element in the department is undoubtedly a source of strength to it; but the proportion of European recruitment has already been reduced to such a low figure—25 per cent.—that this Government do not consider that the advantages to be derived from the retention of such recruitment are a sufficient reason for continuing the service in this province on an all-India basis. They are therefore prepared to agree to its provincialization. The existing members of both the Indian Forest Service and the Indian Service of Engineers should, of course, retain all their existing rights and privileges as members of all-India services, and should receive any general concessions which in future may be granted to services which are retained on an all-India basis.

58. This Government agree with the Commission that the success of the changes proposed by them will depend to a large extent on the retention in service of existing members of the all-India services, and that effective measures should be taken to discourage premature retirement. The present position in regard to such retirement is that the

existing officers of the all-India services fall into one or other of the two categories, namely :—

- (1) those who at present have a right to retire prematurely and will retain that right until the action to be taken on the Statutory Commission's Report is known, and
- (2) those who will obtain a right, to continue for one year only, to retire prematurely when the departments in which they are employed are transferred to the control of Ministers responsible to the legislature.

Many officers included in the first category will, if the proposals for the transfer of all subjects are accepted, also come into the second category. All existing members of the all-India services in the province therefore have, or, if all subjects are transferred, will obtain, a right to retire prematurely. Under the existing rules this right will be exercisable in the case of some officers when action to be taken on the Statutory Commission's Report is known, and in the case of others within one year of the transfer of their departments. The Commission propose that these officers should not be required to exercise the option of retirement within any fixed period, but should be given a continuing right to retire. With the experience of the last ten years before them this Government have no hesitation in accepting that proposal as the best method of retaining officers in the service : to prescribe a date beyond which the option cannot be exercised will undoubtedly lead to the early retirement of a number of officers who might otherwise be content to stay on in the service. These retirements will in turn react on the prospect of obtaining recruits in the future. This Government also agree that the safeguards provided for members of all-India services in the Government of India Act should be maintained and that the consent of a majority of the Council of India should continue to be required to any rules or changes in the rules affecting the conditions of service in these services.

59. The Commission have referred to the anxiety of officers in regard to the security of their pensions and of provident and family pension funds in the event of a transfer of financial control from the Secretary of State in Council to the Government of India. They point out that they are not in fact proposing any such transfer, but they nevertheless adopt and conform the view expressed by the

Lee Commission that in the event of such transfer of control adequate provision should be made for safeguarding service pensions. This Government agree with the view taken by both Commissions, and they also desire to bring to the notice of the Government of India the anxiety of European officers in regard to the rate of exchange at which their provident fund contributions may be transferred to England on their retirement. The United Provinces Association of European Government Servants and the Inspector-General of Police have recently addressed this Government on the subject. It appears that both that Association and the Indian Police Association have approached the Government of India in the matter and have received replies which they consider unsatisfactory. The fear of officers is that the present rate of exchange may be lowered, and their savings thereby materially reduced. This Government appreciate the difficulty of meeting the apprehensions of officers in this matter, but bring it to the notice of the Government of India since the anxiety in regard to the future rate of exchange may counterbalance the good effect of keeping open the right to premature retirement by inducing officers to go while exchange is still favourable to them.

60. The Commission propose that future recruits to all-India services should be given all the rights, privileges and safeguards which they recommend for existing members of these services with one important exception, namely, the right of premature retirement. This is mainly, if not entirely, a question of supply and demand. If the Secretary of State can obtain recruits of satisfactory quality, and in adequate numbers, on these terms, then there will clearly be no justification for offering better terms. But having regard to the uncertainty of the future conditions in which members of the services will have to work and to the impossibility of foreseeing what these conditions may be, there is some reason to fear that it may not be possible to obtain European recruits without giving them some prospect of being able to retire on reasonable terms before the completion of the ordinary period of service. It is not perhaps necessary to give the option of retirement on precisely the same terms as at present, but the conditions of service might be altered so as to give definite rights of retirement after fixed periods of service as in the case of the Indian Army. The period on completion of which the earliest pension should be admissible might be twelve years and higher pensions might be offered on completion

of longer periods of service. It seems doubtful whether the somewhat vague safeguard contemplated by the Commission, namely, a moral obligation on the part of the Secretary of State, will be regarded by those principally concerned as sufficient. I am, however, to add that Nawab Sir Ahmad Sa'id Khan is strongly opposed to the provision of a right of premature retirement among the conditions of service of new recruits, and considers that it would be preferable to do without European recruits altogether if they cannot be obtained without such an inducement.

61. This Government accept without comment the Commission's recommendations in regard to the medical treatment of European officers, additional pensions for Governors, and the establishment of provincial Public Service Commissions. They desire, however, to bring it to the notice of the Government of India that the recommendation of the Commission in regard to the medical treatment of European officers will not be operative, unless effective steps can be taken to secure the services of the sanctioned cadre of European officers of the Indian Medical Service. If the present conditions continue, this province will in a few years have no European Medical officers of that service. His Excellency's Ministers desire to make their approval to the establishment of Public Service Commissions subject to the condition that the interest of the minority communities will be safeguarded by a definite scheme providing for the due representation of such communities in the provincial and subordinate services.

## PART X.

### THE HIGH COURTS.

62. In this part of their Report the Commission propose to achieve uniformity in the administrative positions of High Courts (including the Chief Court of Oudh and the Courts of Judicial Commissioners) by placing them all under the executive control of the Government of India. As desired by the Government of India, this Government have obtained the views of the Hon'ble Chief Justice and Hon'ble Judges of the High Court at Allahabad and of the Hon'ble Chief Judge and the Hon'ble Judges of the Chief Court of Oudh on this proposal, and a copy of these views is enclosed with this letter. The Government of India will observe that while the Chief Justice and two

Judges of the High Court disagree with the Commission's proposal, the remaining Judges of the High Court and Chief Judge and all the Judges of the Chief Court support it. For the reasons given below this Government consider it desirable that the existing relations between these Courts and the provincial Government should be maintained.

63. The Commission lay much stress on the need for uniformity. That argument is a two-edged one. At present the anomaly lies in the position of one Court only, the High Court at Calcutta, and even if it be admitted that there is a need for uniformity, the natural way to achieve that would be by altering the position of the one Court at Calcutta rather than by altering that of the remaining seven Courts. It is not for this Government to express any opinion on the possibility of altering the position of the High Court at Calcutta, but even if it be found impracticable to bring that Court into the same relative position to the local Government as the other Courts occupy, this Government would deprecate the anomalous position of the Court at Calcutta being made a ground for making a change which they consider unnecessary in the position of the High Court at Allahabad and the Chief Court of Oudh. His Excellency Sir Malcolm Hailey and his Government are in full agreement in desiring that the complete independence of the High Courts in judicial matters should be maintained and that these Courts should be kept free from local political influence, but they are not convinced that the achievement of these objects necessarily involves the removal of the Courts from the executive control of the local Governments. It is reasonable to anticipate that such removal may be construed as a definite mark of distrust in the reformed local Governments. The underlying principle of the new constitution which the Commission propose for the provinces is to give the Ministry and the legislature responsibility for the whole range of provincial administration. That range naturally includes the administration of justice. It is therefore unfortunate that the Commission should at the same time propose to limit the field of provincial responsibility by removing the High Courts from the executive control of the local Governments. The Commission have argued with some force that the result of retaining any subjects as reserved subjects would be to focus criticism on these subjects. The same result is likely to follow the removal of the High

Courts from the provincial sphere. The change will not protect matters relating to the Courts from discussion in the provincial legislative council so long as the whole judicial administration, other than the High and Chief Courts, remains a provincial subject. If the council wishes to discuss such matters it will have no difficulty in doing so when the demands for grants for the ordinary judicial administration are presented to it. The relations between the High Courts and the district courts must remain intimate and many of the demands placed before the legislature will continue to be based on recommendations made by the High Courts. It is difficult to see how discussion regarding the High Courts can be avoided when such demands come before the councils.

64. It is of the highest importance that the relations between these Courts and the local Government should be those of mutual trust and confidence. The local Government must rely to a large extent on the High and Chief Courts for the maintenance of a high standard of efficiency in the district courts. These Courts, on the other hand, cannot maintain such a standard without the support of the local Government. It follows that the closer and more intimate are the relations between these Courts and the local Government, the more satisfactory is the judicial administration of the province likely to be. The Hon'ble Sir Grimwood Mears has pointed out that it would not be physically possible for any successor of his to maintain such close relations with the Government of India as he has had with this Government. This Government would regret any decision which is likely to deprive the future Government of this province of the advantages which the local Government have in the past derived from its close association in administrative matters with the High and Chief Courts.

65. The Commission have suggested that the change will secure the more complete independence of the Courts from local political influence and will simplify and accelerate business. On these two points I am to say that this Government endorse the views expressed by Mr. Justice King that no change is necessary to secure the independence of the Courts and that the change proposed will hinder rather than accelerate the despatch of business.

66. If the ultimate decision should be that the High Courts are to be removed from the executive control of the

local Governments, then some of the existing administrative arrangements between the High Court at Allahabad and the Chief Court of Oudh and this Government will require revision. This Government do not wish to urge this as a reason for not accepting the Commission's proposal, but think it right to refer to it as the necessary changes will involve legislation. At present, for example, the High Court is empowered to remove a munsif without reference to this Government. That is a power which the local Government could hardly be expected to leave in the hands of a Court which is in administrative relations with the Central Government. The Chief Court of Oudh has power to dismiss or otherwise punish the ministerial staff of any court subordinate to it. Here again it would be anomalous to allow servants of the local Government to be dismissed by an order of a Court which was under the executive control of the Government of India. These and other similar anomalies will no doubt be capable of adjustment, but it is right that it should be recognized from the first that adjustment will be necessary and that they will involve legislation. I am to add that this Government assume that, even if the Courts are centralized, the Governor will continue to be consulted before appointments of Judges are made. There are in making appointments of Judges other matters to be taken into consideration than those based merely on the legal attainments of the persons nominated.

#### ENCLOSURE 1.

*Copy of a letter No. 3732, dated July 22, 1930, from the Registrar, High Court of Judicature at Allahabad, to the Secretary to Government, United Provinces, Reforms Department.*

**SUBJECT.**—*Recommendation of the Indian Statutory Commission that the administration of High and Chief Courts should be transferred to the Central Government.*

In reply to G. O. No. 2-R., dated June 30, 1930, I am directed to say that Sulaiman, Mukerji, Banerji, Young, Sen, Niamatullah, Bennet and Kisch, Judges, agree with the proposals relating to the High Court contained in Part X of the Report of the Indian Statutory Commission, in which the Commission have recommended that the administration of High and Chief Courts should be transferred to the Central Government. The opinions recorded by the Hon'ble Chief Justice and other Hon'ble Judges are enclosed herewith.



OPINIONS OF THE REMAINING HONOURABLE JUDGES.

HON. C. J.—“ I am of opinion that there should be no change. I have had over ten years' experience of the working of the present system and have been in association with four Governors. The present system affords an opportunity for discussion between the Governor and other members of the local Government and the Chief Justice, the importance of which can hardly be over-estimated. This personal association would be lost, or at all events made more difficult, by reason of distance, if the transfer were made to the Government of India.

Further, the Chief Justice of this Court could not establish the same personal relationship with a high official resident at Simla or Delhi. Moreover, it is an advantage to the local Government and the High Court that the appointments be made by a local Government, who have, or can easily obtain, personal knowledge of men from whom selection must be made.

Throughout all the time I have been here it has been the practice of the local Government to ask the opinion of the Judges when appointments were under consideration and this has done much to maintain the good relations which exist between the local Government and the High Court and in my opinion also has benefited the people of this province. There are moreover times when an urgent decision has been necessary and on all these occasions the local Government and the High Court are enabled to act promptly.

I know the working of the present system and I am content with it. I do not want it to be changed, and my opinion is impersonal because in any event I shall have ceased to be Chief Justice before the proposed change can come into operation.”

KENDALL, J.—“ I can see nothing in favour of the proposal. As regards establishment: It is true that the local Government have not been treating us generously of late, but I do not anticipate anything better from the Government of India, which will receive demands from a large number of High Courts without any knowledge of the facts. The local Government at least knows something of our needs, and is much more accessible. In personal matters it is much easier and quicker to get leave, etc., from the local Government, which will have to nominate the officer to officiate in a vacancy even if it has nothing further to do with the appointment.

No doubt it will be more convenient for the Government of India to deal with the High Court of Calcutta and Assam, for the reasons stated in the Report. But there is no reason why the position of these Courts should not continue to be ‘anomalous’. I do not think it will hurt any of the other High Courts to continue their relation with the local Government.”

KING, J.—“ The proposal is to put all High Courts under the administrative control of the Central Government.

There may be good reasons for the proposed change but the reasons given in the Report seem to me distinctly weak. It is

pointed out that the High Court of Calcutta is under the administrative control of the Central Government, while all other High Courts are under their respective provincial Governments. The Calcutta system is shown to be unsatisfactory. No attempt is made to show that the system in force for all other High Courts is unsatisfactory. I do not find even an expression of opinion to that effect. This being the position, the argument that uniformity of treatment is desirable would logically lead to the conclusion that the Calcutta High Court should, so far as possible, be brought into line with all the other High Courts. Even if it is impossible to attain absolute uniformity, because the Calcutta High Court exercises jurisdiction over Assam as well as Bengal, no good case is made out for altering the system which has been in force for all other High Courts for many years and is not said to be unsatisfactory. A doctrinaire desire for uniformity is not an adequate reason for altering administrative systems which have stood the test of time and have not been found wanting.

The only reasons or justifications given for the proposed change, apart from the desire for uniformity, are as follows:—

- (1) There is reason to believe that it would carry out the real intention of the Feetham Committee. On this I cannot express an opinion as I do not know what their recommendations were, or how far they should be considered authoritative.
- (2) Representations were made from several sources in favour of the change.

As the grounds of the representations are not stated, one cannot form any opinion whether they are well founded.

- (3) The importance of maintaining the complete independence of the High Court bench . . . in controversies in which the local administration may be involved.

The complete independence of the bench is no doubt a matter of great importance, but I think the Judges are completely independent under the present system. They are appointed by His Majesty or by the Government of India. The provincial Government cannot transfer them or take any sort of disciplinary action against them. Their salaries are non-votable. The only 'administrative control' which the provincial Government exercise over the Judges personally consists in granting leave, but I believe there has never been a Judge who feared that the provincial Government might refuse to grant leave on account of being displeased with him or whose judicial impartiality and independence were in the slightest degree affected by any such consideration. I do not know what sort of 'controversies' are referred to. Judges have to decide cases. It is no part of their duty to enter into controversies.

If it is intended to suggest that Judges are apt to show favour towards the provincial Government, owing to the fact that the High Court is under the administrative control of the provincial Government, I think the suggestion is quite unfounded. I do not see how the proposed change will make the Judges more independent. It is inconceivable that a Judge's impartiality or independence will be affected by the facts (a) that his salary is paid from central funds instead of from provincial funds, (b) that his applications for leave are dealt with by the Central Government instead of by the provincial Government and (c) that the High Court budget is under the control of the Central Government instead of the provincial Government.

(4) The change will simplify and accelerate business.

I think the change will have precisely the opposite effect. Correspondence will be addressed to Delhi or Simla instead of to the provincial capital or provincial summer head-quarters. This will, at the outset, involve more or less delay in all cases. The Central Government on receiving the communication will in many cases have to refer to the provincial Government before replying. This would be necessary in the case of applications for leave when a temporary Judge has to be appointed. It would also probably be necessary if the High Court required any additions, alterations or repairs to buildings, and in many other classes of requirements. The Central Government would never be in a better, and usually would be in a worse, position than the provincial Government to decide whether the requirements are justified. Hence the necessity for frequent reference by the Central Government to the provincial Government and great delay in transacting business.

Although the reasons given for the proposed change strike me as weak and unconvincing, I do not wish to be understood as condemning the proposal entirely. I do not think there is much to be said *against* the proposal except that the new system does not seem to possess any substantial advantage over the present system and that it will involve delay in the transaction of business. There is no reason to fear that the High Court Judges 'will be removed too far from the provincial Government'. The High Court will continue to supervise the subordinate courts and advise the provincial Government regarding the appointment, promotion or dismissal of the subordinate judiciary. This will keep the High Court in close touch with the provincial Government.

As for the High Court Judges themselves I think the proposed changes will make no difference. They will be neither more nor less independent than they were before. I cannot express any opinion on the financial aspect of the proposed changes. I presume that the High Court fees will not be earmarked for meeting the expenses of the High Courts in such a way that the amount available for expenditure will depend upon the amount of income derived from fees. If the budget grants are on the same scale as

hitherto the High Court will neither suffer nor benefit financially from the proposed change."

## ENCLOSURE 2.

*Copy of a letter No. 1885/XIV—144-21, dated July 15, 1930, from the Registrar, Chief Court, Oudh, Lucknow, to the Secretary to Government, United Provinces, Reforms Department.*

With reference to your letter No. 3-R., dated June 30, 1930, I am directed to submit the following opinion of the Court on the subject.

The Court agrees with the authors of the Report that the Chief Court of Oudh should be placed under the control of the Central Government for administrative purposes. There are some points, however, to which the Court desires to draw special attention. In paragraph 343 of the Report, it is observed—"Permanent Judges are appointed by His Majesty". This is so in respect of the Chartered High Courts, and statutory provision sanctioning such procedure is to be found in section 101 of the Government of India Act; but permanent Judges of the Chief Court of Oudh are not appointed by His Majesty but by the Governor-General in Council as is provided by section 4 of the Oudh Courts Act (U. P. Act IV of 1925). The Court thinks that in the new Government of India Act, provision should be made to remove this anomaly. As regards Additional Judges the appointment will be made under the Oudh Courts Act, 1925, by the Governor-General in Council, but in the same Act provision is made for the appointment of Judges in temporary vacancies by the provincial Government. In the matter of the former appointment the Court is of opinion that the law should remain as it is, that is to say, power should vest as it vests to-day in the Governor-General in Council for the appointment of Additional Judges for a period not exceeding two years. In the matter of temporary vacancies the Report observed that "the appointment of temporary Judges should be made by the Governor-General, but only after consulting the provincial Governor". The Court entirely agrees with the first part of the recommendation. As regards the necessity for consulting the provincial Governor in the matter of the appointment of temporary Judges, the Court thinks that this recommendation may be looked at from two points of view, *viz.*,—(a) the appointment of such persons as are members of the Indian Civil Service or of the Provincial Civil Service, and (b) the appointment of such persons as are not members of either of those services. In the former case the Court is of opinion that the provincial Governor should be consulted. The necessity for such consultation is greater in these provinces for the reason that there exist two High Courts in the same province—one at Allahabad and the other at Lucknow. In the latter case the Court thinks that there is no need for consultation with the provincial Governor. In such cases the recruitment is generally made from the Bar and the High Court is in the best position to make nominations for appointment by the Governor-General.

## APPENDIX.

[*Extracts from notes by HON. CAPTAIN NAWAB SIR AHMAD SA'ID KHAN and His Excellency's Ministers.*]

## A.—COMPOSITION OF THE MINISTRY.

(i) I have not been able to understand the position of the official Ministers. In practice these official Ministers are bound to prove a great weakness, instead of strength, to the constitution. Suppose a vote of censure is carried against the Ministry and the Ministry resigns on the ground of joint responsibility. When the new Ministry is formed these official Ministers are again included in it. Will it not bring about another vote of censure for this very reason, that the members of the outgoing Ministry were taken into this new Ministry? I know there may be occasions when a certain action of an individual Minister may be responsible for the vote of censure; but in that case not only the official Ministers but even the non-official Ministers, if included in the new Ministry, will be quite safe. But whenever there is a question of broad policy which is the cause of the motion of censure I do not think there will be any chance for the official Ministers to be able to command the confidence of the house if they are included in the new Cabinet. One can understand the position of the Executive Council on the Reserved side; it is straight and frank. It indicates from the very beginning that the Reserved side is beyond the authority of the legislature. But to make the whole thing Transferred and to keep Ministers who are practically irremovable is a very illogical proposal. It is quite likely that the cause of the vote of censure may be the policy advocated by the official Ministers inside the Cabinet, and in fact, it is more often than not that it will be so. Will it be logical to remove the elected members of the house for a policy with which they had the misfortune to agree and to allow those to be included in the new Cabinet from whom it originated? I think such a proposal will be a constant cause of friction between the legislature and the Governor, and I am unable to understand what will be the fate of such official Ministers except that they will be made to retire on higher pension and others will be selected who will meet with the same fate in a short time and so on—(*Sir Ahmad Sa'id Khan*).

(ii) The second point on which the Muslims laid great stress was their inclusion in every Cabinet. I know it is difficult to include such a provision in the Statute; but I think statutory rules can be framed saying that no Cabinet should be composed of members of only one community—(*Sir Ahmad Sa'id Khan*).

(iii) It is obvious that the Commission is not opposed to the idea of guaranteeing representation in the Ministry for the important minorities, but they feel that they cannot do so in the Statute. We are of opinion that there should be a provision in the Statute or statutory rules which may guarantee that the representation of the non-Muslims and the Muslims in the Cabinet would be in the

proportion of two-thirds and one-third—(*Honourable Ministers' joint note*).

#### B.—CABINET PROCEDURE.

(i) It is proposed that there should be an I. C. S. Secretary to record the minutes and that he should have direct access to the Governor "so that whether His Excellency was present at a given meeting or not he would be kept impartially and fully informed of the course of business". I regard this as a very unfortunate proposal. What will be the effect of this proposal on the mentality of the Ministers? They will regard this Secretary as a spy on them. From the very beginning it will mean that the Governor has not got full confidence in his Ministers. In fact, the new Constitution will start in an atmosphere of suspicion and mistrust, while for the success of the Constitution, as far as my experience goes, it is necessary that there must be team-working which cannot be had unless all colleagues have full trust in each other. I will go even a step further; I think for a successful Cabinet there should be among the members a sort of feeling of being members of the same family. It is then and then only that the best can be had out of the men. It seems to me sufficient if the record of the minutes of every meeting of the Cabinet should be submitted to His Excellency for his perusal. I think we can take it for granted that those who will be appointed as Ministers will be honest enough not to misrepresent a case before His Excellency—(*Sir Ahmad Sa'id Khan*).

(ii) We endorse the recommendations of the Commission with regard to the procedure at the meetings of the Ministry generally. We agree that ordinarily much work should be disposed of at the meetings of the Ministers without the Governor being present. We do not think that there should be any official who should be in a position to advise independently the Governor against any of the decisions of the Cabinet. The Governor after reading the proceedings of the meeting may discuss any particular matter with the Ministers and may, if he thinks incumbent upon him to do so, over-ride any decision in the interest of law and order and in the interests of the minorities. However, we recognize the necessity of some independent agency which would keep the Governor informed with regard to all matters of the administration carried on by the Ministers without having any power whatsoever, except that which may be necessary for and consistent with his duties to gather information for the Governor from the different departments—(*Honourable Ministers' joint note*).

#### C.—CONSTITUTIONAL RESOLUTIONS.

The proposal that the provincial legislature should have a power to carry a "constitutional resolution" providing for—

- (a) changes in the number, distribution or boundaries of constituencies or in the number of members returned by them;

- (b) changes in the franchise or in the method of election; or
- (c) changes in the method or representation of particular communities,

is calculated to avoid the necessity of a fresh Act of Parliament before these changes can be made. So far as (c) is concerned we are of opinion that the zamindars will not agree to the proposal as they would like permanently to have a right of separate special electorate to send their representatives to the council. The proposal, we think, in spite of the safeguard provided for the minorities, namely, that a constitutional resolution must be carried by two-thirds of the votes of the legislature and "as part of this majority" by two-thirds of the members representing the community affected may not be acceptable to the Muslims who would not be prepared to give up the present right of separate election till they feel they should give it up of their own accord—(*Honourable Ministers' joint note*).

#### D.—DEPRESSED CLASSES.

The importance of the depressed classes lies in the fact that they include within their fold lakhs of humble tillers of the soil and also real agricultural castes such as Kachhis, Lodhas, Kurmis, Murao, Koeri, Tharus, Bhukasas, etc. Had it not been for Tharus and Bhukasas the culturable land of the Tarai would have remained uncultivated . . . The importance of the depressed classes will fully appear from the following very pertinent observations of Sir Tej Bahadur Sapru:—

"I do say what is my most sincere conviction, that unless you are able to solve your own social problems about the depressed classes and the untouchables, I do not see any real prospect for real genuine constitutional advance, and any Constitution that you may get will certainly not arouse any interest in me, because I do feel, howsoever good, howsoever perfect, howsoever ideal your Constitution may be, unless you have got the support of the minorities and unless you command the confidence of those whom in your vanity you may describe as depressed classes, your Constitution will not be worth a day's purchase."

So far as my information goes, suitable representatives of the depressed classes will be forthcoming to fill 40 seats on the Council.

The Simon Commission admit that most of the depressed class associations which appeared before them favoured separate electorates with seats allocated on the basis of population. The United Provinces Adi-Hindu (Depressed Classes) Leaders' Conference was held at Allahabad on July 23. "This Conference while thanking the members of the Indian Statutory Commission for taking a keen interest in the cause of the depressed classes, strongly pro-

tests against their recommendation of a joint electorate system and is of opinion that nothing short of a separate electorate would ameliorate the social and political status of the depressed classes." The Simon Commission concede that "Separate electorates would no doubt be the safest method of securing the return of an adequate number of persons who enjoy the confidence of the depressed classes". But they are averse from recommending separate electorates for them on the ground that separate electorates will prevent their political amalgamation with other Hindus. They have ignored one important fact. The depressed classes are not a homogeneous body. They consist of a large number of heterogeneous clans which are socially distinct and are kept apart from one another by a spirit of rigid exclusiveness and separation. They entirely lack cohesion and are scattered all over the province. Although according to our *Shastras* as interpreted by the Calcutta High Court the various sub-divisions of the Shudra caste can intermarry but in actual practice intermarriage between them is impossible. The depressed classes have been divided into separate clans by very sharply defined boundaries over which it is impossible for one to pass to another. Ethnologically they are so many tribes and clans, with separate histories and customs. There should be two distinct stages in the process of their political amalgamation with the high caste Hindus. The first stage should be that they should be brought together and welded into one political unit. Their unification into one political unit will be seriously retarded if the system recommended by the Simon Commission is adopted. Their voting strength will be much smaller than that of the high caste Hindus. A member of the depressed classes who wants to get himself elected will look rather to the ease with which he can secure election to the council than to the political education of his order. He will naturally solicit the support of the high caste Hindus who will be both numerous and influential . . . . When such a candidate is returned to the council, he will be a servile follower of the high caste Hindus and will be more concerned to keep their favour than to represent the interests of his own order . . . . If the system recommended by the Simon Commission is adopted, the candidates returned to council will not only show no interest in the welfare of the depressed classes but will regard themselves as members of the high castes and in no way allied to the depressed classes. The result will be that the concession proposed by the Simon Commission instead of being a blessing will be a veritable curse to them . . . .—(*Raja Bahadur Kushalpal Singh*).

#### E.—REPRESENTATION OF GREAT LANDHOLDERS.

(i) The chief reason that they have given for the abolition of the special representation of the zamindars is that they have been able to capture enough seats in the legislatures through the general electorates. That is true; but it is equally true in the case of other special constituencies. For instance, graduates, professors, teachers and *ex-teachers* come into the councils through the general electorates and yet the universities are given representation. Simi-



larly, men of business and commerce in the Assembly and the councils have often been elected through the general constituencies. Is there any reason why they should be given special seats, while the special seats of the landlords should be taken away? If we compare the number of landlords returned to the council in the election of 1924 with those returned in the election of 1927, we find that while in 1924, according to the memorandum of the United Provinces Government, there were 51 landlords, their number has come down to 45 in 1927. With the widening of the franchise I am sure that the chances of the landlords of getting into the councils from the general constituencies will be greatly reduced. But this is not all. The real point is this; that the landlords elected by the general constituencies will perforce try to represent the views of their constituencies in the legislature. Again and again, I have noticed in the legislative council that while the landlords representing the special constituencies boldly took a line of their own in regard to a particular proposal, the other landlords, in spite of their sympathy with the proposal, opposed it because they were afraid of their constituencies. A landlord elected by a general constituency will never be able to go against the wishes of his constituents—(*Sir Ahmad Sa'id Khan*).

(ii) We are bound to say that the withdrawal of the rights of the zamindars and taluqdars to be represented through their own associations is a very retrograde and unjustifiable recommendation. The arguments advanced by the Commissioners that the Montagu-Chelmsford Report contemplated only as a temporary arrangement to give representation to the zamindars through a separate special electorate of their own and that they did not desire it to be a permanent feature cannot be accepted as incontrovertible. While it may be arguable on the basis of a certain expression which occurs in the recommendations of the Montagu-Chelmsford Report, namely, "we must give them special measure of representation, if they need it *at the outset*, but it may be that their political education like the ryots will come mainly by pressure of events" that it was not meant to be a permanent feature. It cannot be denied that the power of the zamindars, as has been found all over the world, is bound to decline gradually, and if special representation to zamindars was found necessary to be given from the very beginning, it is even more necessary now when the working of the Reforms have shown that the majority of the zamindars has decreased after every general election under the Reforms. The alternative suggested that the Governor may nominate zamindars in the legislature if the representation is not adequate according to the representation guaranteed to them under the present Constitution is, in our opinion, extremely unsatisfactory and cannot be acceptable to the zamindars . . . . We are of opinion that at least sixteen seats should be allotted to the Agra Province Zamindars' Association and the British Indian Association of Oudh to return their representatives to the council, as has been recommended by the Indian Central Committee or even more proportionately to the total strength of the council—(*Honourable Ministers' joint note*).

## F.—SECOND CHAMBERS.

(i) As far as this province is concerned I am strongly in favour of a second chamber. This was recommended by the committee elected by our legislature to co-operate with the Simon Commission; it was recommended by the Central Committee also. The Simon Commission has recommended the federal system of government for India. In the majority of cases where there is the federal system different states which form part of that Federation possess their own second chambers. This is a well-recognized form; it has been used in many places as a brake on the democracy and I do not see any reason why we should be deprived of this. Looking ahead one feels that whatever be the form of the Constitution in the near future ultimately the powers of the Governors are bound to disappear, the pressure for their abolition will continue and sooner or later Government will have to modify them. Therefore, the argument used in the Simon Commission's Report, that the existence of this second chamber will be used as an argument to curtail the powers of the Governor is not really a strong argument. That demand will always be made by Nationalist India, and when that time comes people will realize that after all it is a blessing to have a second chamber. I should like to suggest that the future Governors should be directed in the Instrument of Instructions to include a certain number of members of the second chamber in the Cabinet. This will ensure the presence of conservative element there—(*Sir Ahmad Sa'id Khan*).

(ii) The Commission has discussed the question of a second chamber in the provinces at length and has not given its definite opinion one way or the other. We are of opinion that in view of the provincial autonomy to be established, it is absolutely necessary that there should be a second chamber in the provinces where it is pressed for . . . Specially in the United Provinces the necessity of a second chamber should be recognized. We think that the second chamber should consist of members mainly elected by the recognized landholders' associations, such as the British Indian Association of Oudh and the Agra Province Zamindars' Association and similar bodies in other provinces. Other interests entitled to representation should also be represented. The percentage of the representation of Musalmans by separate electorate in this chamber should be the same as that in the lower house. Thirty per cent. representation of the Musalmans in the second chamber should be on the basis of 30 per cent. of the elected members in the chamber including the representatives of the depressed classes. Of course this body will necessarily have to be a much smaller body than the lower house. This house should consist wholly of non-officials and nominated members.

Some of the Cabinet members should also be drawn from the second chamber in the provinces—(*Honourable Ministers' joint note*).

## G.—SYSTEM OF ELECTION TO FEDERAL ASSEMBLY.

We are definitely of opinion that the direct system of election to the Federal Assembly should continue as it has existed hitherto.

But if we are to recognize the force of argument that in a federal system probably it would be better to resort to indirect election, we will say that the system of election may be partly direct and partly indirect. It may be indirect in so far that the representatives of the Hindus and Muslims may be elected in each constituency by an electorate consisting of the Hindu or Muslim members of the upper and lower house of the provinces residing in each constituency, the Hindu or Muslim members of district and municipal boards, residing in each constituency and also other Hindus or Muslim representatives representing special constituencies and other bodies residing in each constituency. Other minorities may be represented by nomination by the Government or by direct election from the different bodies representing different interests. We think that if our suggestion is adopted, it is likely to be more effective and probably be accepted more readily by various interests and communities. However, our colleague, Hon. Raja Bahadur Kushalpal Singh, is opposed to this proposal as he thinks the urban element and influences under the scheme will predominate. Representation by proportional representation would not be acceptable to the Muslims as it is likely to decrease their representation in the Federal Assembly. Moreover, the proposal has not even the merit claimed for the mixed electorate with reservation of seats for Muslims. Thirty per cent. representation of the Muslims in this house should be on the basis of 30 per cent. of the elected members in the house including the representatives of the depressed classes. We are strongly of opinion that the recognized landholders' associations should have the right to send an adequate number of representatives directly to the Federal Assembly. The British Indian Association at Lucknow and the Agra Province Zamindars' Association at Allahabad, and similar bodies in other provinces, should have a right of electing their representatives to the Federal Assembly according to their demands or even more proportionately to the total strength of the Assembly. These bodies should be treated as separate special electorates to return their representatives to the Federal Assembly. Landholders should continue to retain the right to stand from general constituencies also.

It cannot be said that the zamindars have no vital interests to protect in the Federal Assembly. It will have to be recognized that the zamindars in the Federal Assembly have certain vital interests to protect, such as their share in the naval, army, aerial and railway services, not to mention the services in the different departments under the Government of India—(*Honourable Ministers' joint note*).

## H.—THE ARMY.

Under this head I wish to deal with the proposals made by the Commission about the Commander-in-Chief and the Indian Army. The changes proposed here definitely reduce the power of the Central Legislature as far as the Army is concerned. First of all, I shall deal with the position of the Commander-in-Chief. In para-

graph 170 of volume II the Commission has recommended that the Commander-in-Chief should not in future be a member of the Executive Council, and if any question arises in the Indian legislature it will be dealt with by a civilian or perhaps by one of the members of the Executive Council. The effect of the Commission's recommendation is to put the Army under the control of the Viceroy instead of the Government of India with the object, as they say, of assisting "in removing from the path of Indian constitutional progress an obstacle which otherwise threatens to block it for an indefinite time". I admit the Army question is an all-important one, and there is nothing further from my mind than to make any suggestion for any radical change in that direction. I agree that the Army should be treated as a Reserved subject. I agree that the legislature should not be allowed to have too much interference with the Army Budget. I believe this is the present position. The Assembly can only discuss the Budget, and the members during the discussion can only make suggestions, and it is not necessary for the Government of India to accept any cut or to act on any suggestions made by the Assembly. They are quite free to do as they like. In the recommendations of the Commission it is proposed that Indians should not be allowed even to associate themselves with the question of the Army and with the problems of the defence of their country. The Indian members of Government, although they are not in charge of the Army, as members of Government, I believe, discuss the question of the Army and their suggestions carry some weight with the Commander-in-Chief. But as it is proposed, they will have nothing to do with the Army in future and the whole thing will be dealt with by the Commander-in-Chief in consultation with His Excellency the Viceroy. I am aware of the importance of this question, and I do not wish to make any suggestions for a radical change. The present system has worked perfectly well for a long time, and I see no danger if we allow it to continue instead of accepting the recommendations of the Commission—(*Sir Ahmad Sa'id Khan*).

#### I.—TAXATION ON AGRICULTURAL INCOMES.

The question of taxing agricultural incomes is one which may have very far-reaching effects. It deals with the life blood of the agricultural community of India. Apart from the theory whether revenue is rent or tax, there can be no denying the fact that whatever increase is proposed, either as tax or as rent, it will be a further burden on land. The question whether those who wish to impose the tax regard it as rent or tax does not interest the person who will have to pay it. To him it matters little by what name you levy the impost; what interests him is—how much is left for him and his children. Therefore I think that what applies to Government land revenue policy can apply to the taxation of agricultural incomes. Here I may make two quotations giving the views of expert officers on the land revenue policy. These may sound irrelevant because we are dealing with a tax on agricultural incomes; but, as I have said, I treat both in the same light and

therefore they are applicable here. Sir Charles Metcalfe observed:—

“I believe that the happiness of the bulk of the inhabitants of the Western Provinces depends more on revenue settlement than on any other thing whatever.”

Sir Alfred Lyall once observed that—

“Few human beings could cause so much misery to so many people as a settlement officer who over-assessed a district.”

Here I may mention that whatever be the name, tax or rent, it is a further burden on land and it will be passed on to the cultivator in time to come, if not immediately.

Now, coming to the vexed question whether land revenue is a tax or rent, I know that opinions differ, but the arguments put forward by the Indian Taxation Inquiry Committee, who were an expert body in dealing with a question like this, are interesting and illuminating. They have dealt with this question in paragraph 78 of their Report. They have dealt with the practice before the British occupation in the time of Muslim and Hindu rule. They have quoted many eminent writers, and I will only quote from them the conclusions arrived at by the Bombay High Court in a case from Kanara which are as follows:—

“This review of the authorities leads us to the conclusion arrived at also (after careful discussion of the question) by Professor H. H. Wilson, that the proprietary right of the sovereign derives no warrant from the ancient laws or institutions of the Hindus and is not recognized by modern Hindu lawyers as exclusive or incompatible with individual ownership.”

As to Muslim rule, they have quoted Colonel Galloway, who was the greatest authority on the Hanifan school of Islam. He says:—

“The soil was the property of the cultivator as much as it could be. Law gave no power, policy gave no motive to remove him or to disturb him, so long as he paid his taxes. When he did not, his lands could be attached; and so can those of the first Peer holding by the firmest tenure of the English law. The right of the Indian husbandman is the right of possession and of transfer; and the rate of his land tax was fixed; often indeed the amount. In what respect, then, is his right of property inferior to that of the English landholders?”

So far it deals with the times before the British *raj*. On page 64 they have quoted two decisions by the Privy Council. They were of course about Bengal. There the Lord Chancellor stated:—

“Considering with the best attention in my power these papers, they confirm most strongly the opinion I should have derived from the permanent Regulations, namely, that the proprietor of the soil had a permanent interest

in it at the time when the English established themselves in that settlement."

It is admitted that the proprietors of the soil had a permanent interest in the soil when the English established themselves. It may be argued that all this was said of those who live in the permanently-settled districts. But this argument has no force. The members of the Taxation Inquiry Committee agreed on page 66 that "in the generality of cases the zamindars and ryots are respectively the possessors of the proprietary right subject to the payment of land revenue". Therefore, those who think that land revenue is a tax have got a strong ground to stand upon.

Now, let us take the practical side of the case. It will be very difficult to find out the real sum to be assessed. As we know, landlords do not generally keep accounts, and it will be a great hardship for them to do so; they pay most of their wages in kind; and I do not see any means of finding out exactly what is the income to be assessed, unless it be by some rule providing for taking into consideration, in assessing the tax, the rent of a tenant. We know that the settlements, although they are made in the districts after every forty years, create great disturbance in the life of the village. But this will have to be done annually, and the settlement process on a minor scale will continue in the villages to upset the village life. Then there are suspensions and remissions, and from year to year a fairly large staff will be engaged to find out the real amount that should be assessed.

As to political objections, the Committee themselves have mentioned them in paragraph 268 of their Report. I am sure further taxation on agricultural income is wrong. It will bring down the price of the land a good deal and will cause great economic distress. And the political effect of it in future will be such that the income so derived will hardly be worth the bitter feeling that this is sure to create.

In sort, the position in the districts which have periodical settlements is that the proprietor of the land has to pay 40 per cent. of his income as land revenue and 10 per cent. as cesses. The question then remains whether there is any justice in taxing him further. If he is to be taxed on the top of this the position will be simply intolerable and is bound to revolutionize the whole structure of rural society in this country. If he is to be taxed instead of land revenue the number of exemptions will be such that it will not be worthwhile to do so—(*Sir Ahmad Sa'id Khan*).

#### K.—THE SERVICES.

As to the security services, *i.e.*, the I. C. S. and the I. P. S., I hold the same view which I expressed in 1924 as Minister, *i.e.*, they should be kept as all-India services, recruitment should be made not by the Secretary of State but by the Government of India, and they should have the right of appeal to the Government of India in cases of their promotion, supersession, etc. My reason for proposing this change is that with the further advance of re-

sponsible government in this country the services should be responsible to some authority within India and not to an authority outside the country. I know there are certain important points where the control of the Secretary of State should be kept—points of military importance or of Imperial interest; but I do not think that the question of the services is of such importance that the Secretary of State should be responsible for their recruitment. The reason why I did not propose to provincialize these services is this. A certain number of members of these services will always be required for the Central Government, and the present arrangement has worked excellently. They select officers from various provinces, and if the services are provincialized they will either have to recruit separately for the centre or to take officers on deputation from the provinces. In the former case, the efficiency of the central cadre will be very much reduced by the fact that they will have no experience of the provinces. At present irrespective of the views of the local Government the Government of India can benefit a lot from the experience of such officers belonging to the various provinces who happen to be there. In the latter case, *i.e.*, in the case of deputation, there will always be difficulties in their promotions, and they will always look back to their provincial Governments as their masters instead of looking up to the Government of India. Besides this, I agree that it will be desirable to continue recruitment of Europeans in these two services for some time to come. I understand it will be difficult to get recruits if the services are provincialized. It should be easier to get European recruits if the Government of India will give them a guarantee about their pay, pension and prospects. I am told that European recruits would not like to come out unless the services are controlled by the Secretary of State. I do not see why the guarantee given by the Government of India, which is as much part of the British Empire as any other country, should not be regarded as sufficient to induce European recruits to join the Indian services—*(Sir Ahmad Sa'id Khan)*.

---

No. 4706-S. Reforms, dated Simla, the 14th August 1930.

From—MILES IRVING, Esq., C.I.E., O.B.E., I.C.S., Additional Secretary to the Government of the Punjab,

To—The Joint Secretary to the Government of India, Reforms Office, Simla.

I am directed to reply to your letter No. F. 67/30-R. of 24th June 1930, asking for the views of the Government of the Punjab on the recommendations of the Indian Statutory Commission.

2. The memoranda which I am directed to enclose are divided into two portions. The first Enclosure A, contains the views of His Excellency the Governor, Sir Geoffrey de Montmorency, K.C.S.I., K.C.I.E., K.C.V.O.,

C.B.E., I.C.S., and of the Hon'ble Member for Finance, Sir Henry Craik, Bart, C.S.I., arrived at after an informal but detailed discussion of the second volume of the Report with the non-official members of Government. The second, Enclosure B, contains the views of the non-official members of Government recorded after the official views had been in their hands. The Hon'ble Member for Revenue, the Hon'ble Khan Bahadur Captain Sikandar Hayat Khan, M.B.E., formally expresses his concurrence with the views of the official Members, subject to his minute in enclosure B.

3. With regard to the request contained in paragraph 5 of your letter for an estimate of the reception which the recommendations of the Commission have received in the Province, the Punjab Government observes that the first impression given by a review of the opinions expressed in the Press or otherwise (which, as will be explained later, are the opinions of a very limited number of people) is that the report of the Statutory Commission has been received with universal and unqualified condemnation. To disentangle from this view the various threads of opinion, it is necessary to bear in mind that the majority of those who have any appreciation of the situation, are pre-occupied with the object of securing for their respective communities the best possible place in the new constitution. From this point of view the element of bargaining is vital; any expression of satisfaction would, it is felt, be regarded as tantamount to an abandonment of further demands; and when this sentiment is coupled to that general tendency to violence in expression which is a feature of the popular press, it is possible to regard the most trenchant condemnation of the report as really meaning no more than that it is desired to press strongly for further concessions; and if this is true of the conflict between various communities, it is not less so of the criticisms levied by liberal opinion as a whole against the provisions intended to maintain the control of the British Parliament. Further, in appreciating the general current of opinion the Punjab Government bears in mind those very true words which end the first volume of the Statutory Commission's Report, where emphasis is laid on the strength and intensity of the demand among all educated Indians for equality with Europeans, and on the resentment aroused by any suspicion of differential treatment. The result of this on the one hand is the demand among



all educated classes alike for the position of equality for India among other nations which may be described by the convenient if vague expression ' Dominion Status '. This on the other hand is qualified to a degree which varies enormously by a mental reservation that too much must not be sacrificed for it. This double tendency leads inevitably to inconsistency, as we will find the same persons while they are thinking of national equality brush aside as bogies the considerations which point to safeguards; while at another time when they are thinking of the actual future which faces themselves and the members of their particular class or community, they insist that safeguards should be provided, although the form they take is too often that of the dominance of their own community.

4. Passing to criticisms on the specific proposals of the Commission we find that they fall into two classes corresponding with these two distinct points of view. On the one hand they are what may be called liberal or nationalist criticisms directed against anything that appears to maintain the control of British Parliament through the bureaucracy, or to prevent the freest exercise of what are regarded as democratic principles. The second class of criticism may be described as the communal in which each community protests against the position of inferiority to which it considers itself to be subjected or the lack of recognition of the need for prominence which its particular minority requires.

5. In the provincial sphere, if the transfer of all subjects to Ministers has been received with satisfaction, care has been taken not to stress it. This may be due partly to what has been described above as the bargaining idea, but is also partly due to a deep rooted suspicion of any officially sponsored concession falling short of what it might have been in individual opinion. Perhaps the Punjab Government itself must plead guilty to having accentuated this suspicion, by having been the first of the Provinces to recommend the transfer of all subjects to Ministers: for we detect the feeling that a proposal which has been made by officials must have a catch in it somewhere. Apart from this general distrust, the proposal of the Commission which has been most strongly attacked is that of the official member in the ministry. It is felt that behind this lies the intention that the transfer of power should be made illusory by giving this

member the portfolio of law and order. Mild objection is also taken to the proposal to appoint a council Secretary, probably as a part of that general suspicion of the permanent official which is by no means confined to India, though this is mitigated by practical acquaintance with the fact that he is indispensable. Another objection is to the proposal that only the Ministry as a whole should be liable to censure. As the Statutory Commission has pointed out, popular institutions in England only work because the Cabinet dominates the House and not the House the Cabinet. This is a situation which even in England the back benches find it hard to bear, and is one which will never be popular.

6. More marked is the objection that is taken to the powers given to the Governor. It is believed, though without any justification, that these are more extensive than those which he at present exercises, and it is noteworthy that although no satisfactory protection for minorities can be found except through the powers of the Governor, and although in practice the appeal to such powers is almost instinctive to the Indian people, the critics do not welcome these powers as a means of protection. The reason of this no doubt lies in the theoretical liberal objection to the existence of autocratic powers, coupled with a somewhat naïve belief in the efficacy of protection by constitutional enactment. A great deal of the interest in the protection of minorities turns round the Land Alienation Act which all agriculturists desire to be placed out of the power of a Central Government to amend and which urban interests desired to be declared unconstitutional.

7. As regards the Centre there is general nationalist criticism in which all communities join of both the separation of the Army and the irresponsible nature of the Central Government. As regards the latter it is unnecessary to expatiate. The objections from the nationalist point of view are obvious, that the constitution does not provide (*e.g.*), for commerce and finance being administered in accordance with Indian interests, and that it contains in itself no promise for a future day when responsible Government in the Centre will be given. At the same time there are indications that the Muslims feel some relief that the proposals have not taken the form of a Cabinet responsible to a Central Legislature with a

Hindu majority. With regard to the Army there is a very general sentiment against its removal from the purview of the Central Legislature and of the Government of India though some sober thought recognizes that this was inevitable in transition; and it is felt that this condemns India indefinitely to a situation in which it will be dominated by a foreign army. Moreover, the deepest suspicions are felt on the sincerity of the intentions about Indianization. The argument that so long as British officers and troops are necessary in India they cannot be under the orders of a Dominion Government is hardly understood, and is regarded purely as the outcome of racial pride. And it may be true that there are those who shrewdly believe that if it is embarrassing for India to be deprived of the British Army, it will be equally embarrassing for England to have the Army returned on her hands, and that it is not beyond the scope of bargaining to retain its services on better terms.

8. The federal constitution of the Central Legislature is attacked more on communal than nationalist lines. No doubt the Hindus who are unanimously opposed to federalism base their arguments on the undemocratic nature of the proposal, on its tendency to hinder the national unity of India and on the design which they profess to see beneath it of preventing the voice of India being heard; and no doubt there is some genuine expression of nationalist feeling behind this; but it is impossible to resist the conclusion that the bitterness of their opposition is largely prompted by the fact that the federal system makes impossible the domination of India by the Hindu intelligentsia. The Muhammadans on the other hand seem to be divided on the question of indirect election; some favour it: but urban Muhammadans seem to entertain a suspicion that it will deprive the urban classes of a fair representation in the Centre; but all favour federalism from the feeling that local interests (that is to say Muhammadan and agricultural interests) would not be safe under a popular Assembly directly elected and composed chiefly of Hindus.

9. On the purely communal question opinion follows stereotyped lines, on which it is unnecessary to deal at length as the main positions of the various parties have been fully expressed. There are no signs (and it is hardly

reasonable to expect them) of any mitigation of the full Muhammadan claim for separate electorates, continuance of minority weightage, and majority representation for themselves where they are in a majority of population: Muhammadans also express themselves dissatisfied because Sind is not to be separated from Bombay, the North West Frontier Province is not given full provincial status and nothing is done for Baluchistan. At the same time, many who are in a position to gauge the feeling of the community are of opinion that they are not so dissatisfied with the proposals as for bargaining purposes they make it appear. The Hindus on the other hand are genuinely concerned at what appears to them to be the perpetuation of Muhammadan rule in the Punjab without a counterbalancing power of control from the Centre. The Sikhs retain their view that if there are separate electorates they should get as much weightage as any minority community elsewhere, and in particular adhere to the claim for a third of the Provincial seats. They share with the Hindus their fear of Muhammadan rule in the Punjab.

10. So far we have only dealt with the opinions expressed in the press and by the more vocal and politically active section of the intelligentsia. Turning to other classes which are more numerous and of solid importance in the Province, the landlord classes have protested against the suggested abolition of special landholders representation and the suggestion to tax agricultural incomes; but apart from this, there is no indication that the great bulk of the rural (or indeed the urban) classes have any real information or views regarding the recommendations; and the majority of the district officers stress the point that their local rural notables know little or nothing about the report, and that even among the urban intelligentsia there are few who have attempted to make themselves acquainted with it. Copies of opinions received from the Commissioner, Lahore, and the Deputy Commissioners of Hoshiarpur, Jullundur, Gurdaspur, Gujranwala, Amritsar, Muzaffargarh and Multan are enclosed. These are generally typical of the reports received and provide an interesting picture of the attitude of the bulk of the people of the Province.

## ENCLOSURE A.

*Memorandum containing the opinions of the Official Members of the Government of the Punjab on the recommendations of the Indian Statutory Commission.*

## TABLE OF CONTENTS.

	PARAS.
I.—Introductory . . . . .	1—9
II.—Provincial Redistribution . . . . .	10—14
III.—The Governors' Provinces—	
A. The Provincial Executive . . . . .	15—21
B. The Provincial Legislature . . . . .	22—41
C. The Franchise . . . . .	42—43
D. The Second Chamber . . . . .	44—46
IV.—The Backward Tracts . . . . .	47—48
V.—The Centre—	
A. The Federal Assembly . . . . .	49—53
B. The Council of State . . . . .	54—58
C. The Governor-General in Council . . . . .	59—67
D. Relations between the Centre and the Provinces . . . . .	68—71
VI.—The Question of Defence and the Army . . . . .	72—80
VII.—Finance . . . . .	81—92
VIII.—The Services . . . . .	93—103
IX.—The High Courts . . . . .	104—109
X.—Relations between the Home and the Indian Governments	110
Appendix A.	
Appendix B	

## I.—INTRODUCTORY.

## (REPORT, PART I.)

The Indian Statutory Commission has observed that the constitutional system which it has propounded must be judged as a whole; and the more closely we have examined the scheme, the more forcibly we are struck with the close interrelation between the parts and the whole and with the repercussions in other features of the scheme which criticism of one or more portions in details inevitably involves. We feel that before proceeding to a detailed discussion of the various proposals put forward, we should consider the general scope of the Constitution which has been suggested for the governance of the Indian Empire.

2. We are convinced that the Commission is right in holding that if India is to take its place in the Commonwealth of Nations, which form the British Empire, an All-India, and not merely a British Indian, solution for India's constitutional problem must be sought. We are fully agreed also that whatever constitution is now devised should be elastic in frame, and contain within itself

the seeds for future adjustments and developments, obviating periodical enquiry by any outside agency into new forms of growth. We shall now proceed to examine these two fundamental propositions.

3. As regards the former, the position of the States is in itself a powerful argument in favour of recourse to the federal plan as an ideal for an All-India Constitution, even though the complexities involved may tend to retard early and complete realization. The perspective for the whole structure which the Commission presents is the organization of the Indian Empire on a federal basis, of which the constituent parts will be the provinces in the immediate future and the States at some, probably more remote, future date; but delay in accretion of the latter, we observe, need not retard the immediate completion of the federation of the provinces for the purpose of a Central Government in British India. So leaving aside for the moment the question of the inclusion of the States, we may proceed to examine the relation of the provinces to the Centre. This involves an issue of primary importance between the merits of a Federal Constitution on the one hand and of a Unitary Central Government on the other. We feel that in this matter it is easy to fall into the mistake of laying excessive stress either upon historical parallels and precedents elsewhere or upon theoretical principles. An argument against federalism, which is commonly put forward, is one of a theoretical nature. A federal constitution, it is pointed out, is normally one in which States, that are already sovereign, agree to surrender a portion of their sovereign rights to a central body; and such a constitution, it is argued, can have no relation to the provinces of India which are not, and have never been, sovereign bodies, but, on the contrary, are and have always been creatures of the Central Government. To this in the field of political theory it may be replied in the first place, that though the provinces are no doubt the creation of Parliament, they are not, and have never been, the creatures of the Government of India, except in so far as the latter exercised supervision, direction and control over them as agent of a Secretary of State responsible to Parliament. Further, because the Government of India Act gives the provinces rights and powers which cannot be taken away by the Central Government, they are now *vis-a-vis* the Central Government invested to some extent with the attributes of sovereignty; and finally it may be urged that in so far as Parliament has divested itself of the intention to interfere with the administration of transferred subjects, to that extent (so far as the peculiar constitution of the British Commonwealth permits) Parliament has endowed them with elements of sovereignty. From another aspect it is better to build up from below by the natural development of items already in the practice, within a considerable sphere, of representative and self-governing institutions. But in truth the question is not one for theoretical discussion, for whatever the position that has been created by the Government of India Act, it may still be altered by Parliament; and the question for consideration is whether here and now the

process should be continued of investing the provinces with the attributes of sovereignty, or whether Parliament should retrace its steps, and create in India a unitary Government from which the provinces will hold all their powers by delegation. This is a question which we consider should be decided on its merits without regard to the subsequent inclusion of the Indian States in an All-India federation; because the prospects of that federation are so remote that they ought not, in our opinion, to stand in the way of making, as soon as practicable, whatever may be considered the best constitution for British India. In this controversy the Punjab Government in its Memorandum prepared for the use of the Statutory Commission has already given its verdict in favour of the federal system by which the powers of provincial Government are derived by direct delegation from the British Parliament, and the relative position of the spheres of the Central and provincial Governments respectively shall be clearly defined by a Statute; and to this general position, in which we are supported by the authority of the Statutory Commission, we adhere. This seems to us the natural and logical road of the development of what has already been established in the first stage of the reforms. We are not unconscious of the argument which lays stress on the fact that in past history the danger of India has been the centrifugal tendency; but we feel that modern communications are in themselves a sufficient guard against that peril, and that what is to be feared to-day is the risk that a majority chosen in very large and diffused constituencies from the whole extent of a sub-continent may seek to impose its will against local feeling, as expressed in provincial legislatures, whose members are elected from smaller and more concentrated constituencies and are in closer touch with their electors, and in spite of local conditions. We are fortified in this view by the fact that there have been in the past ten years several incidents illustrating this tendency.

4. In our Memorandum we left the subject at the point of expressing our opinion in favour of the general position that the provinces should be federal bodies, and expressed no opinion as to the method of their confederation. The proposals of the Statutory Commission now take us a step further and definitely propose that the Central Legislature should derive its political tinge from the provincial legislatures, inasmuch as it is elected by them. In spite of certain obvious disadvantages of indirect election we are in favour of this proposal, because it emphasizes and establishes beyond dispute the federal nature of the Indian Constitution. A Central Legislature elected independently by direct election might claim not only a separate existence but also an overriding authority from that of provincial legislatures; but a body elected by these legislatures to represent them obviously draws its inspiration from them, and will ensure that central activity for common purposes will ordinarily be in harmony with the general sense and sentiment of the constituent parts.

5 As regards elasticity for development and adjustment, as far as the provinces are concerned, we consider that the provision made for possible changes in the composition of the legislature,

referred to in paragraphs 95 and 109 of Volume II of the Report, is adequate. There are other matters of somewhat lesser relative importance in which the discretion to change or to use alternative methods seems to be sufficiently provided in the project. We have received the criticism that the relations between the Central and provincial Governments as regards respective spheres of activity are too static. This must necessarily be so, if the danger of one authority trespassing on the other is to be avoided. Nevertheless, the provisions of paragraphs 184 to 188 of Volume II, where, by agreement, fields of mutual interest can be enlarged and opportunities for co-operation secured, and the method explained in paragraph 306, whereby the allocations of particular taxes to the Provincial Fund can be changed by a special procedure necessitating a very large majority of agreement, appear to us to be instances where, by mutual arrangement, really necessary adjustments in interrelations can be secured.

6. Leaving aside for the moment the examination of the scheme for the Central Government, we observe that the Commission has not been able in this case to paint in the colours which will form the final picture with so sure a hand. The close connection of the activities of the Central Government with matters of broader interest, which impose a certain burden upon a Parliament charged with imperial and international obligations and other special responsibilities, the uncertainty of the time and manner of the merging of the Indian States in the federal whole, the period needed for the growth of self-sufficiency in defence, the necessity for safeguards while the constituent provinces of British India are being established in their new and wider field of autonomy in provincial affairs, all point to a transitional stage in which the final form of the eventual metamorphosis of the centre cannot be accurately delineated. Meanwhile, the Commission has visualised a federal Assembly with a composition of a very different nature to that of the present Legislative Assembly and with inevitably increasing and weightier reactions on the Executive; and the provisions of paragraphs 169 and 173 of Volume II of the Report vest the Governor General with a discretion so to choose his Executive Council that it may increasingly include in its unitary authority "responsive" members, connected with, though not responsible to, the Legislature. It is at this point that the uncertainties of transitional conditions referred to above compel the Commission to leave their picture unfinished; and whatever comments may arise as regards details, we feel that the immediate difficulties, of necessity, restrict further vision.

7. Before we pass on to examine the scheme for the provincial system of Government in detail, we desire to express general agreement with the observations regarding the needs for safeguards at this stage and at the present time, which are contained in Chapter 5 of Part I of Volume II of the Report. We are convinced of the reality of the menace which the length of India's frontiers both by sea and land represent; and subject to some observations regarding provincial militias, which we will record later, we fully



recognize that the need of an army in India sufficiently strong and well equipped for the task of defence and the maintenance of internal security is a fundamental requirement. We likewise agree that for many years to come it must contain British troops and British officers serving with Indian Units. We shall have something to say later as regards what we conceive to be the general sentiment concerning the Indianization of the Army and the building up of a Dominion Force.

8. We also agree with the Commission that, while conditions are in the state of progress towards complete self-government, the maintenance of law and order must remain a matter of special concern; and that, in this connection besides a stable Central Government, there will be need for some special powers to vest in the Governor General and Governors, in the exercise of which they will be responsible to Parliament. Similar provisions will likewise be needed to ensure the power to act effectively in an emergency and to prevent the breakdown of regular administration and its lapse into a state of anarchy.

9. With the development of full self-Government we hope the day is not far distant when the problem of minorities will cease to loom so large as it does at the present time; but as things are now, it is generally acknowledged to create a serious situation, for which a satisfactory palliative for the nonce is not forthcoming from within, but must be sought from some impartial outside source. For some time to come it appears clear that special power to interfere to protect the weak should be vested in the Governors and Governor General; and we believe that only by this method can we secure for these classes effective protection. The other device of a recital of their rights in Statute, supplemented by facilities for recourse to a judicial body for their interpretation and enforcement, is in our judgment ineffective and impracticable.

## II.—PROVINCIAL REDISTRIBUTION.

(REPORT, PARAGRAPHS 37 AND 38.)

10. We must confess that we are puzzled as to the exact implications of the recommendations of the Commission under this head. It is stated to be a matter of urgent importance that the Government of India should set up a Boundary Commission to investigate the main cases in which provincial readjustment seems called for, and endeavour to work out schemes with a view to seeing how far agreement is possible.

11. It is not clear to us whether this Commission is to be set up forthwith and whether decisions on its recommendations will be awaited and reached before the introduction of the new Constitution. If this is so, it must inevitably delay the consummation of the first steps of the latter, as the decisions would undoubtedly affect in a marked degree the details of arrangements for Central and provincial legislatures, service cadres and provincial finance.

The consequent delay in the introduction of the reformed constitution would, in our view, be politically most undesirable.

12. The other alternative, namely that we should proceed to consider and shape reforms dealing with the provinces as now constituted and hold the boundary enquiry subsequent to the introduction of the new constitution, involves some almost equally inconvenient results. The question of the separation of Sind is a point of insistence in the creed of a large section of Muslim opinion; and in some quarters the problem of political balance will not be considered as solved until this question is decided. Boundary enquiries are, generally speaking, unsettling; and past experience has shown that they possess some special property for mass irritation. The new reforms could hardly start in more unfortunate conditions if the first years of their working are to be passed in an atmosphere of the agitations and uncertainties which boundary enquiries invariably engender.

13. We fear that we have raised difficulties without giving helpful suggestions towards their solution; but one thing we wish to make clear is that no need is felt for any enquiry or readjustment in this Province; and we venture to urge in the general interest that if and when a Boundary Commission is constituted, its attention should be strictly confined to really outstanding cases, such as Sind, the Ooriya country, Sylhet and Cachar. We feel that a roving brief can only result in general unsettlement, in bringing dormant volcanoes into activity in British India and in the revival of numerous claims by Indian States to tracts long since included in British India.

14. If an early solution of the Sind and Ooriya country problem could be devised and subsidiary enquiries into other cases could be postponed until after the new constitution had settled down, the political exigencies of the situation might possibly be met.

### III.—THE GOVERNORS' PROVINCES.

#### (REPORT, PART II.)

##### A.—*The Provincial Executive (Chapter I).*

15. Turning to the question of the form of Government to be established in the provinces we accept the general principle laid down in paragraphs 46 and 47 whereby there will be established in each province a Unitary Government responsible to the legislature over the whole provincial field. In pursuance of this general principle, after a most careful consideration of the implications as regards Law and Order, Finance and Revenue in particular, we agree to the transfer of all subjects in the provincial field. We also agree to the principle of joint responsibility of the Cabinet, and to its corollary that the legislature can only censure the policy of the Cabinet as a whole and not that of an individual Minister. We also agree that it should be provided in the Constitution that Ministerial salaries are not liable to be reduced or denied by a vote

in supply but should be alterable only by statute; and finally we think that the appointment of Under Secretaries is probably desirable and would help to consolidate the position of the Cabinet in the House.

16. As regards the composition of the Ministry, the Punjab Government in Part II, paragraph 40 of its Memorandum for the use of the Statutory Commission recommended that there should be included in the Cabinet an official member partly to introduce the element of administrative experience, and partly to give the Governor the assistance of an official colleague; and in paragraph 48 the Statutory Commission has made the inclusion of one or more such members optional with the Governor. The two proposals are essentially different. That of the official members in the Punjab Government's Memorandum envisaged that the official member would hold office in successive Ministries and would be allotted an unimportant portfolio. This does not seem to be inherent in the proposals of the Statutory Commission; indeed the implication of paragraph 64 of Volume II of the report is that he might be entrusted with the portfolio of Law and Order. We see the difficulty which may be felt in provinces, such as the Presidencies, with a Governor previously unacquainted with the details of Indian provincial administration and conditions, if there is no experienced technical Indian administrator to place considerations before the Cabinet, and we realize that in these provinces it may be necessary to retain this discretion, but, after careful thought, we consider that where it can be dispensed with, it should not be employed; and we would deprecate its use in this Province under present conditions. There is no doubt that the presence of an official in a Unitary Cabinet introduces an element of unreality into the joint responsibility of the Cabinet and their relations with the legislature. Nor will the position of such a Minister be easy. He may constantly have to subordinate his considered opinion based on his experience of administration to another view. If he goes out with one Ministry and returns with another, he is likely in popular estimation to come to be considered the unlucky genius of the Cabinet. While if on the fall of a Ministry he reverts to official duties, he stands the risk of being considered *quâ* an official as influenced in favour of views which prevailed in the Cabinet in the time of the late Ministry. The inclusion of the official member is a feature of the proposed Constitution which has been specially singled out for attack, and has and will be used as an argument to prove that the responsibility of Cabinet is meant to be but an illusion. With the wish that responsibility in internal and provincial affairs should be as complete as circumstances permit, we think it very desirable that no shadow of ground should be left for this allegation, and, after full consideration, are prepared to abandon the official member, considering that both requirements can be met by an amplification of the proposal made in paragraph 51 for the appointment of a Secretary to the Cabinet. In the altered conditions the Governor will feel difficulty in retaining sufficient touch with the departments and in being supplied with sufficient information to judge whether he is fulfilling the special

responsibility laid on him by his Instructions, for which he is endowed with special powers. The new element of joint responsibility in the Cabinet may also place Ministers in a position of difficulty which hardly exists at present. It will be desirable in the interest of the working of their joint responsibility to increase the volume of Cabinet papers and elaborate schedules of decisions and orders in different departments which are circulated for the information of the Cabinet. An individual Minister may not infrequently require recourse to some agency by which he can procure additional information about some line of policy in administration in a department of which he is not in immediate control. He may desire this information for the purposes of discussion with a colleague or prior to moving that in the interests of joint responsibility some matter should be ventilated in Cabinet discussion. For these purposes a Cabinet Secretary with enlarged functions will be useful. We think that this official should be called Principal and Cabinet Secretary. He should attend all Cabinet meetings and should also have the right of calling for papers from any department. He should be permitted to set forth verbally the administrative information and considerations pertaining to any question in the Cabinet (in which he will not, of course, have any vote or position as a member). He will be responsible for 'vetting' the completeness of the departmental summaries on questions coming up before the Cabinet for discussion and decision. He will keep a record of the proceedings of the Cabinet. He will be at the disposal of the Governor and the Ministers in the Cabinet for procuring informations as regards action which is being taken in departments on any particular matters; and he will, when the Governor does not preside at a Cabinet meeting, place the proceedings of the Cabinet before the Governor, and convey his views to the Cabinet. While we have considered and rejected the alternative proposal that it should be open to the Governor to appoint officials as Ministers, we are of opinion that powers should be reserved to the Governor to appoint as Minister a non-official who was not an elected member of the legislature, and it should be a condition of his tenure that he should find a seat within six months of his selection. We consider that this discretion should rarely be exercised, and only used when the Ministers chosen urge the inclusion in the Ministry of some prominent person who by accident or in the chances of election has failed to secure a seat but who is otherwise marked out for useful and popular service in a Ministry.

17. As regards the selection of the Cabinet, we are in general agreement with the views expressed in the second portion of paragraph 55 and particularly with the proposal that the appointment of a Chief Minister should be left optional. As already proposed in paragraph 41 of Part II of our Memorandum, we think it desirable that the representatives of different communities should be included in the Cabinet, but we do not think it possible to do more than to provide in the Governor's Instructions that he should make this attempt. The formula in the Instructions can hardly go further than that suggested in the Memorandum of the official

members of the Punjab Government submitted to the Simon Commission, namely that until the development of parties on another basis than that of community has been more firmly established, it will be still desirable for the Governor, so far as possible, to endeavour to include members from the three leading communities.

18. With regard to the meeting of the Cabinet (paragraph 51), we consider that it should be left to the Governor's discretion whether he should preside or not, but we think that if he does preside, he should not exercise a vote or casting vote. We agree with the views expressed in the last five lines of paragraph 52 that there should not be in the new Statute any counter-part of sub-section 1 of Section 50 of the Government of India Act, but we think that it should be within the power of any Minister to ask for a note of dissent to be recorded and subsequently to write a minute of dissent.

19. With regard to the powers of the Governor, we agree, as we have made clear in our introductory remarks, that in certain matters safeguards are necessary, and that there is no other way of securing them except by conferring power on the Governor in these special and restricted cases to require action to be taken otherwise than on the advice of his Ministers.

20. First as regards the authority under which he will act, we observe that it is proposed in paragraph 50 that he will be subject to the superintendence, direction and control of the Governor General; and from paragraph 350 it appears that in these matters the Governor General will act under the orders of the Secretary of State on behalf of Parliament, but that Parliament will restrict its powers of interference in provincial matters to those subjects in which the Governor is given an overriding power. We agree to these proposals, but observe that the third item in paragraph 50 is hardly a case for an overriding power but really for a power to secure appropriation for a liability of Government in respect to non-voted expenditure. This can perhaps be secured without overriding powers, merely by making such expenditure a first charge in a provincial budget. It has been urged that the drafting of the fourth of the subjects mentioned in paragraph 50 will have to be carefully worded to prevent the reintroduction of the power of Parliament over the whole provincial field. We assume that its real meaning is that when the Governor General in Council had addressed the *local* Government as regards the matters within its sphere, enumerated in paragraph 182, and has elicited no response or unsatisfactory replies, if the matter is sufficiently serious, the Governor General in Council will move the Governor General to address the Governor to get to grips with his Ministry or use his special powers. This might involve the stage of advice to his Ministry or dismissal of the Ministry if it disregarded advice, but it would also include a discretion to override the Ministry by an order addressed to the executive agency concerned to have certain action taken or to desist from certain action relating to matters enumerated in paragraph 182. Subject to these observations, we agree to granting the Governor an overriding power for the five purposes enumerated in paragraph 50. To these we

could add that recommended in paragraph 50 of the official Memorandum to the Simon Commission of securing the financial stability of the province. We observe that this course is recommended in paragraph 99 of the report of the Punjab Provincial Committee, and we think that the issues are so important and the damage that might be done by ill-considered action so irremediable that no theoretical consideration should stand in the way of these safeguards. We do not, of course, suggest any powers such as now exists for holding up of individual new schemes or restoring grants (except in an emergency as contemplated in the Commission's report) for special reasons or for carrying on departments. Interference of this kind would react, however salutary it might appear in the personal view of the Governor, on the reality of responsibility. What we have in view is some power to defer too hasty actions in the interests of the larger issues of financial stability in such cases as relinquishment of substantial revenue or the acceptance of large schemes involving progressive recurring revenue expenditure, which could clearly only be financed eventually by recourse to extraordinary receipts or loans. There is, of course, a grave danger of severe pressure on the Ministry to abandon revenue particularly land revenue and water rates.

21. Finally, we agree to the proposed powers given to the Governor in paragraph 65 to meet a breakdown of the Constitution. The Governor after due consultation with the Governor General should be final judge of the existence of an emergency.

#### *B.—The Provincial Legislature (Chapter 2).*

22. *Paragraph 67.* We agree that the maximum life of provincial Councils should be five years.

23. *Paragraph 68.*—We consider that the proposed size of provincial Councils of between 200 and 250 is, so far as the Punjab is concerned, excessive at this stage. It will be open to the Council to enlarge it later, if need is felt, under the provisions for subsequent constitutional revision. The Punjab Council at present consists of 22 nominated members, 64 elected from ordinary constituencies, and 7 elected from special constituencies. We consider that the number elected from general constituencies should not exceed 150 and the actual proposal, which we make later on, provides for 124 only which with the addition of 10 special constituencies gives the House 134 members. We see no useful purpose which would be served by making the Council larger, and, on the contrary, think that such an increase of size might result in deterioration in the quality of members returned. In the Punjab, with few large industries and with the bulk of the land held by small peasant proprietors, the number of men of a responsible character who have leisure to devote time to work on a legislature, is few.

24. On the vexed question of communal representation we would invite a reference to the views that we expressed in our official Memorandum, Part IV, paragraph 7, *Seq.* In that Memorandum we put forward various alternatives between which we

found ourselves unable to make a definite choice, owing to the existence of doubtful factors, such as the final claims of the various parties in respect of franchise, and the need of giving more precise indication as to what the extension of the franchise proposed involves in itself. We cannot find anything in what has passed since we wrote this Memorandum to enable us to come to a further conclusion. We still find the claims of the various communities apparently irreconcilably opposed in respect of numbers as well as on the question of communal electorates; and while we have explored certain statistics indicating the possible result of doubling the number of electors, we are still not in a position to say with certainty what will be the effect on the electoral roll. We are, therefore, forced to accept the conclusion of the Commission that in the absence of an agreement between the various communities concerned the principle of communal electorates must stand. We postponed to a later paragraph consideration of the number of seats to be allotted to the three major communities.

25. *Paragraph 78.*—With regard to the depressed classes we are inclined to think that the figures given in paragraph 58 of the first Volume of the Commission's report, namely 2·8 millions of the Punjab are exaggerated. Further enquiries made about a year ago by the Punjab Government put them under 2 millions, of whom a million and a half are composed of *Chuharas* and *Chamars*. We also find that these classes are not a pressing problem in the Punjab. Some of them will come into general constituencies through our new proposals for enfranchisement of tenants, and some will get representation in a special Labour Constituency. We do not think it possible to have a special constituency for depressed classes, and believe that their interests would be best served by one nominated representative who might ordinarily be chosen by the Governor from a panel submitted by associations which represent these classes.

26. *Paragraph 81.*—At present there are two non-official European members of the Punjab Legislative Council, one nominated and one elected by the Commerce constituency. This constituency is no longer likely to return a European, and we think that in future Europeans should have two seats in a separate electorate.

27. *Paragraph 83.*—There is at present one nominated representative of the Anglo-Indian community. We now think that there is no need for separate representation for this community, the voting strength of which is low, but the Anglo-Indians should have a choice as to whether they should merge in the category of Europeans or in the general constituencies.

28. *Paragraph 84.*—We think that Indian Christians should have one seat reserved, but are not at present prepared to express an opinion as to whether this should be by a reservation or by a special electorate or perhaps by other method.

29. Turning to special electorates, there are at present 7—3 for landlords, 1 for Baloch Tumandars and 1 each for University, Commerce and Industry. We are impressed by the fact that,

with the extension of the franchise to a portion of the tenantry and a lowering of the rural property qualifications, landholders of the class which stood for the special constituencies may have difficulties in securing representation. We consider them an important interest in this Province, and as we do not propose to have a Second Chamber, we would retain special representation for them in the Council. According to the numbers of those qualified in the landlord constituencies, the proportion of seats should be 2 Muslim, 1 Sikh and 1 Hindu seat. The Baloch Tumandars are a problem. It is clearly wrong to look at this as a special electorate of 9 persons only. The Tumandar by Baloch custom is the acknowledged head of his tribe. His tribe lies scattered partly within and partly without the British Indian administrative boundary; and the Tumandari system plays an important part in the defence of the frontier and the peace of this portion of the Punjab. Increasingly Punjab cultural and material amenities are spreading in the Punjab transborder and attaching these wild people to the province through their Tumandars by an influence of far greater value than the fear of armed forces. The Balochis within the administrative boundary have some chance of representation in the general electorate of the Dera Ghazi Khan district. Those without in the tribal area, numbering more than 30,000 have none; and it seems to us important to keep them represented through their acknowledged leaders. We would, therefore, retain the special seat for the Baloch Tumandars. We would retain the University and Commerce constituencies; but we would eliminate the Industry seat, which has not given in the past any material essentially different from that representing Commerce; we think it necessary to add a seat for labour which has become important of recent years, and, as we have stated above, we propose adding one seat to represent the depressed classes.

30. We are now in a position to deal with the question of communal representation in the Legislative Council. There are at present 64 Ordinary and 7 Special constituencies. Of the ordinary seats 20 are assigned to non-Muhammadans, or (as we would prefer to express it for convenience) to Hindus, 32 to Muhammadans and 12 to Sikhs. To these we may add some special seats taking account of the community by which the seat has been invariably filled—

Hindus (Landholders general, University and Industry)	3
Muhammadans (Landholders and Tumandars)	2
Sikh (Landholders)	1

The elected communal composition of the Council has been therefore—

Hindus	23
Muhammadans	34
Sikhs	13
Total	70



The position of the Sikhs creates a special difficulty. On historical grounds, and by reason of their contribution to the defence of the country, it is felt that their small minority (11 per cent. of the population) should continue to have some distinct weightage in the Punjab Council. They will not get representation in any other province; and under the Commission's proposals their representation in the Federal Assembly will depend on the amount of their representation in the Punjab Council. In the latter the Muslims look upon them as an ally of the Hindus, who though in a minority are a substantial minority (31 per cent. of the population). The Muslims feel that in allowing weightage the result should not be to deprive them (55 per cent. of the population) of a majority over Hindus and Sikhs combined. The Muslims point out that in giving weightage to Muslim minorities in other provinces, the process has not endangered a substantial and continuing Hindu majority. The Hindus on their part urge the effect upon their interests of a perpetual Muslim majority in the Punjab and the need for the protection of their minority. It is, therefore, a very difficult matter to satisfy the sentiments and aspirations of the parties concerned, while at the same time giving effect to the special considerations which apply in this Province to the Sikhs; but we feel that we cannot go so far as the Commission in paragraph 85 for it seems to us illogical to deprive a population majority entirely of their position.

31. We now put forward a proposal to make the following additions to the general constituencies:—

	Previous.	Addition.	Total.
Hindus . . . . .	20	+ 16	= 36
Muhammadans . . . . .	32	+ 31	= 63
Sikhs . . . . .	12	+ 11	= 23
Europeans . . . . .	...	2	= 2
	<u>64</u>	<u>60</u>	<u>124</u>

thus giving a total of 124 for general constituencies. The addition which we make is to double the existing representation in general constituencies but to deduct from the addition the figure which each community may hope to gain from the special constituencies which we propose. We have added two to the Muslim addition to secure the principle, to which we have alluded in the closing sentence of the previous paragraph. We now add the figures for special constituencies which may be allocated to respective communities as follows:—

Hindus (University, Commerce, Depressed classes and landholders) . . . . .	4
Sikh (Landholders) . . . . .	1
Muhammadans (Landholders—Tumandar seat) . . . . .	3
Christian . . . . .	1
Labour (indeterminate) . . . . .	1
	<u>10</u>

The total composition of the House will thus be:—

Muhammadans	.	.	.	.	.	.	.	63+3=66
Hindus	.	.	.	.	.	.	.	36+4=40
Sikhs	.	.	.	.	.	.	.	23+1=24
Europeans	.	.	.	.	.	.	.	2      2
Christian	.	.	.	.	.	.	.	1      1
Labour	.	.	.	.	.	.	.	1      1
								184

32. We do not pretend that this arrangement will give full satisfaction to all (or perhaps any) concerned; but we think it fair, because—

- (a) it gives Muslims, the majority community, a majority of 2 over Hindus and Sikhs combined (66: 40: 24);
- (b) eliminating the 2 European seats which may be taken to have no communal bias, in the remainder of the House the percentage will be Muslims 50, Hindus just over 30, Sikhs just over 18 and others (Christians and Labour) under 2.
- (c) In the House as a whole, taking in all seats, the proportion will be, Muslims just over 49 per cent., Hindus just under 30 per cent. and Sikhs just over 18 per cent.; and on their present voting strength this gives to Muslims a decided increase while the representation of Hindus and Sikhs will be below that which their present voting strength might warrant.
- (d) In sum total Muslims get more than their present voting strength but less than their population strength. Sikhs get more than their population strength but less than their present voting strength. Hindus get slightly less than either, and suffer in this respect by giving weightage to another minority community which often votes with them, but on the other hand they are not exposed to the effective Muslim majority which the population figures would give over Hindus and Sikhs combined.

33. We are not yet able to say in what proportion the various communities will be represented in voting strength in the new franchise, but we observe that in the existing House the average number of urban electors between constituencies of the three communities shows very little variation (Memorandum Part I, Chapter 2, paragraph 26) and it is perhaps reasonable to suppose that with the lowering of the franchise the state of affairs will not be materially altered. As regards the rural constituencies, we are not in a position to give any accurate figures. We have so far explored an extension of the landowners franchise to landowners and Crown tenants paying Rs. 15 land revenue and over, which would increase the rural voters from 5,71,000 to 8,49,000. In that event the

number of voters per general constituency as compared with existing figures will be as follows:—

	Present.	Proposed.
Hindus . . . . .	12,055	10,314
Muhammadans . . . . .	9,500	7,320
Sikhs . . . . .	14,300	11,143

The effect, therefore, of lowering the franchise would probably be to some extent to decrease the proportionally larger number of Sikh voters, and this tendency will possibly be accentuated by a further proposal to enfranchise tenants as to which we have at the moment no figures.

34. *Paragraph 86.*—We agree that the official *bloc* should disappear, but we think that the legislature should include a Law Officer to assist in matters of drafting and other legal questions. This officer should be nominated and should not exercise a vote, but should be entitled to address the House.

35. *Paragraphs 87, 88 and 89.*—We retain the special representation of University and Commerce seats and add Labour on the ground that only by so doing can we assure that interests which are vital to the growth of the province have a representative voice.

36. With regard to the great landlords, as we have already set forth, we are definitely of opinion that their seats should be retained irrespective of the number of the land-owning class which may succeed in entering the Council through the general constituencies. We think that the proposal to introduce members of this class by nomination would be invidious, opposed to the general elective principle, and likely to expose members thus nominated to the imputation of being not representatives of the people. One argument for the retention of these seats, which applies also to other special seats and has in our opinion great force, is the desirability of providing what may be termed safe seats, such as in the United Kingdom are provided by the Universities, the City of London and constituencies with an overwhelming party majority.

37. *Paragraphs 91 and 92.*—We are in general opposed to nomination of members, and the foregoing proposals have confined the remote possibility of this procedure to cases in which it may be found impossible to find a constituency, namely the depressed classes and possibly Indian Christians and Labour.

38. *Paragraph 93.*—We have already expressed our view that the Cabinet should be selected from the Legislature, and it will, therefore, be necessary to maintain the rule that the Minister, who is not already a member of the Council, must secure election within a period of six months.

39. *Paragraph 95.*—We are generally in favour of the proposal by which provincial legislatures will be enabled to amend their constitutions by resolution as proposed in the report.

40. *Paragraph 96.*—The question of the spheres of Central and Provincial legislations will be dealt with later.

41. *Paragraphs 97 and 98.*—We agree in principle that the Governor's power of certification in legislation should extend over the same field as is covered by his overriding powers to control executive action. We have in a previous paragraph suggested that to that field it may be necessary to add the sphere of financial stability. In relation to the legislature a question that arises is whether an additional corresponding power should be exercised for the purpose of securing financial stability in the shape of restoring grants. The necessity might arise as regards provision for assessment or audit staffs. In certain special circumstances the commission propose an emergency power for the Governor to restore rejected demands for grants and to certify legislation if the course was essential for the interest of the province. While this power must for obvious reasons remain, as far as the financial field is concerned it (no doubt) is a question whether, in circumstances not warranting the special action, this would not be better expressed by specifically allowing the Governor to restore grants if in his opinion this course is necessary to preserve financial stability. If this principle is introduced, there will, it may be argued, be probably less occasion to adopt the extreme course of certification in the general interests of the province a course which should only be adopted in the event of a breakdown of the constitution.

### C.—*The Franchise (Chapter 3).*

42. We are in favour of the following principles to regulate the extension of the franchise:—

- (1) It is desirable that the disparity between the percentages of enfranchised urban and rural population respectively should be reduced. At present 12 per cent. of the urban male population is franchised and only 5 per cent. of the rural.
- (2) It is considered desirable to enfranchise a portion of the tenants of rural land. At present the rural franchise is based partly on certain special qualifications, such as that of being a headman of a village or a retired soldier, but chiefly on possession of land paying Rs. 25 land revenue. Apart from the small class of occupancy tenants, the rural tenants have no vote.
- (3) As regards the enfranchisement of women, we are of opinion that matters should be left as they are, that is to say, they should continue to have the same property qualification as men in spite of the fact that the number of women which is thereby enfranchised is very small. It is a matter where the growth of public opinion should be left to have play. It should be left open to the legislature to pass a further measure of enfranchisement of women if they so desire after the expiry of the fixed period.

- (4) We have considered the proposal of an additional franchise being given to persons who have passed the Matriculation standard of any University, but have not found ourselves able to accept it.

43. Finally, we consider that applying the above principles the property qualification should be lowered but not so far as to result in more than doubling the present number of voters. The first principle will be preserved if the number of rural voters were doubled and the number of urban voters increased by half. The present number of rural voters is 5,71,000 of whom 3,50,000 are landowners paying revenue of Rs. 25 and upwards. The addition of voters paying between Rs. 15 and Rs. 25 would add 2,61,000 Total 8,32,000. This falls short of doubling the existing number of voters in rural constituencies by 3,10,000. While this number, if assigned to tenants-at-will, might be excessive, the further addition of landowners, paying between Rs. 10 and Rs. 15, would add 2,69,000, which would leave only 41,000 for tenants, which would be too little, assuming that the maximum number of rural votes contemplated will be 11,42,000. It is possible that the lowering of the landowners franchise to Rs. 12 might give a fair allotment of the balance of 3,10,000 to tenants, but the final determination of the question can only be made when we have figures showing the effect of the enfranchisement of tenants. This will be a particularly difficult question in the Punjab where cash rents are the exception and where it is not the practice to record in the revenue papers the cash equivalent of rents paid in kind.

#### *D.—The Second Chamber (Chapter 4).*

44. We consider that the balance of argument is against having a second chamber in the provinces—at any rate so far as the Punjab is concerned. We remain of the opinion that a Legislative Council expanded even to the moderate dimensions we have proposed will absorb for some time to come all that we can reasonably expect to secure in the way of persons fitted for the exercise of legislative functions; and that the constitution of a second chamber would deprive the popular chamber of talent which it needs, and tend to make it more unstable. At the same time we are not unaware that a provision of this kind may be needed in other provinces which are larger and more populous and where persons connected with special interests, such as Commerce, Industry and large landed interests are to be found in greater numbers; and if in a province, where a need for an Upper House is felt, the power is not given and used now, it seems unlikely that, as time goes on, in the course of constitutional development a single legislative chamber would at a later stage impose on itself the incubus and check of an Upper House, though we believe there have been instances of this kind in some other countries. It is possible that an Upper House might also obviate in some cases the use by the Governor of his special powers regarding legislation. For these reasons we would not exclude the discretion of having an Upper House in a province, though we are of opinion that this would and should not be used in this Province.

45. Leaving the matter open, it may be urged, will encourage dissimilarity in structure between various provincial Constitutions. This, however, seems bound to occur in any case. Probably the numbers in provincial legislatures will differ from the start; and assuredly after the first 10 years have passed, the discretion for effecting constitutional revision by resolution will result in some legislatures being constituted on a broader or narrower basis than others.

46. We think that the provision in paragraph 117 of an expert drafting body is hardly a matter of constitutional importance, and can be met by rules of business and procedure. We have, however, in another place suggested that the legislature should include a legal expert.

#### IV.—THE BACKWARD TRACTS.

##### (PART III. CHAPTER 2.)

47. In the Punjab the Pargana of Spiti is included in the wholly excluded and the Lahaul Tract in the partially excluded areas. These tracts are not populous; they may still be described as backward. They are cut off from the Kangra district for six months in the year by high snow-bound passes. In spite of these features, however, there seems to us to be little reason any longer to exclude them from the processes of the ordinary administration. Of late the communications with the Kulu Valley, where the headquarter of the Sub-Division in charge of these areas is located, have greatly improved; and we have observed that all the Ministers have visited the valley in the summer months in recent years. We see no reason now to treat these tracts differently from the rest of the Punjab. The policy in the Punjab since the reforms has been increasingly to extend to the more remote and backward parts of the province those opportunities and those amenities, as for example facilities for education, medical relief, public health, veterinary service and agricultural improvement, of which the more central and developed parts of the province have long since been in enjoyment. We see no reason to doubt that, if these tracts are included in the charge of the unitary responsible Cabinet, they may expect to receive a sufficient degree of attention and help. Some difficulties may occur in their representation in voting in a constituency, if elections take place during the winter months; but this situation, though anomalous, is not necessarily a bar to our suggestion; and we believe that the tracts in question have more to gain than to lose by the course we advocate.

48. Before we leave this subject, we desire briefly to refer to the tribal area on the borders of the Dera Ghazi Khan district. The history of this area is described in paragraph 4 of Chapter I of Volume I of the Memorandum prepared for the use of the Simon Commission, and the method of the administration is examined in paragraph 25 of the same Chapter and in paragraph 46 of Chapter VIII of the same Volume. The system has been

eminently successful, and no other or better method of political hegemony can be suggested for the control of the tribes living in and beyond the Suleiman mountains, outside the administrative frontier of British India; but we feel that sufficient financial responsibility has not been shouldered by the Government of India as regards their obligations for frontier defence in this area. The mountain frontier is 240 miles long; and towards the expenditure which the political control of the tribes involves, the Government of India only pays the Punjab Government a sum of Rs. 42,440 annually—a very meagre amount as compared with the scale of payments in which the Government of India are involved in their own administration of the adjoining areas of Baluchistan and the North-West Frontier Province between which the Dera Ghazi Khan frontier is wedged. Besides indirect charges into which we need not enter, the Punjab Government pays Rs. 1,76,000 a year for the Border Military Police and Rs. 72,000 for the Baloch Levy and sacrifices in annual revenue over Rs. 1,30,000 paid in jagirs and in arms to Tumandars.

## V.—THE CENTRE.

### (REPORT, PART IV.)

#### A.—*The Federal Assembly.*

49. As we have explained in the introductory portion of the Memorandum, we are in favour of the system of indirect election by the provincial Councils. As far as the Punjab is concerned, we believe that the method of proportional representation advocated in paragraph 139 will secure fair representation both for majorities and minorities, though not perhaps of some special interests, and that the working of this system is more natural and automatic in its adjustments than resort to the alternative of reserved seats. At the same time if the total number of members in the Federal Assembly were reduced to a figure lower than that stated in paragraph 140—a possibility to which we will later refer—we believe that in the interests of minority representation we should have to adopt the latter method.

50. We do not think it will be possible for a person to be member of both legislatures at one and the same time. If a member of a provincial Council is elected to the Federal Assembly, he should resign his seat in the provincial Council. We agree that the allowances to be paid to members of the Federal Assembly should be non-votable and should fall on provincial expenditure. We approve of a fixed life for 5 years. In our view, subject to an alternative to which we shall refer in discussing the Central Executive, 250 would be a suitable number of members.

51. Considerable doubt was felt as to whether the communal proportions envisaged in paragraphs 143 and 145 would actually result. As regards the latter paragraph, the calculations seem to involve the assumption that all the nominated officials will be

Europeans, which is very improbable. There is a strong feeling among Muslims that their representation should be brought up to 33 per cent.

52. The method advocated proceeds mainly on Federal lines, and tries to secure that the main classes of importance in each Federal unit will receive (whether they are in majority or minority) a due share of representation. As regards communities, Hindus, Muslims, Sikhs (or sub-divisions, *e.g.*, Brahmins, Non-Brahmins and depressed classes), this is likely to be the case. Nor is it unlikely that special interests, such as Commerce, Finance, Large Landholders, etc., will also be fairly adequately represented; but we are very doubtful whether the same expectation will hold good as regards Labour. This is a Central subject; and it seems likely that its problems, as time goes on, will occupy increasing attention in the Federal Assembly, and it appears to us important that it should be adequately represented. Its representation can be secured by nomination in the Council of State; but its presence in that House, mainly concerned in revisory functions, will not secure quite the desired results.

53. As regards the suggestion in paragraph 146, the alternative method of filling a vacancy by holding an election and reserving the seat for the community to which the member vacating the seat belonged, commended itself to us.

#### B.—*The Council of State.*

54. We are in favour of retaining a second Chamber in a Central Legislature for a country of the size of India. We agree that its term should be seven years. As regards qualifications of members, we are generally in accord with the observations in paragraph 151. In the case of ex-Government servants the requirement might be that the person concerned was drawing emoluments of not less than Rs. 3,000 per mensem at the time of retirement. As regards the number of members, we feel that if the numbers of the Federal Assembly are brought up to the figure suggested in paragraph 140, the numbers of the Council of State should be advanced to 120. If this is not done, the Council of State cannot preserve the same weight as it now possesses in a joint session. If our suggestion is adopted, 66 members might be elected and 54 nominated, of whom not more than 20 might be officials. We approve of the suggestion for allocation of seats which proceeds on the basis of common and equal interest of units and not of population figures as in the case of the Assembly.

55. We are divided as regards the method of election. With a specially highly qualified electorate, such as already exists for the Council of State, there is much to be said for direct election. On the other hand desire for uniformity and for emphasis on the Federal nature of the structure points to indirect election as in the case of the Federal Assembly. We assume in this case that communal inequalities will be corrected by nomination.



56. We do not propose to offer any observations on the problem of the relation of Indian States. If, however, they elect to come into the Federation to the extent of seeking representation in the Central Legislature, we feel that such representation could be given to them with more propriety in the Council of State, mainly a revisory body, than in the Federal Assembly; and that in arranging for their representation the extent of their representation should not go beyond providing for voting strength not greater in proportion to British Indian votes in the House than their relative population strength to British India.

57. As regards the powers of legislation of the Central Legislature, some of our colleagues felt that the limits of the field of the power of the Central Legislature in the presence of provincial autonomy would need more strict definition in Statute than heretofore, and that it should be made clear that the Centre had no concurrent or residuary power except in cases coming within the four walls of the Statute. It was suggested that in paragraph 154 under the head *d* (ii) the power to legislate in the direction of repeal or emendation of a provincial law should be confined to cases affecting other provinces or central subjects only. In particular it was desired that safeguards should be provided against the alteration of personal or customary law. The principle enunciated at the end of paragraph 155 was generally approved. While in full sympathy with the desire to protect religious personal and customary rights and prevent intrusions into provincial domains, we feel that the powers with which the Governor General is armed, will operate sufficiently effectively to prevent any of the untoward effects of Central legislation which are feared. We admit that the burden of responsibility placed upon the Governor General in this respect and in the matters referred to in paragraphs 156 and 157 will be exceedingly onerous, but we have no doubt that the responsibility will be wisely and promptly exercised where required. It would also, we think, be reasonable to expect that the change in the composition of the membership of the Lower House may make the situation somewhat easier as regards the emergence of Bills from the Federal Assembly which are not in accord with the general sentiment of provincial legislatures.

58. We deal with the financial powers of the legislatures and the division of resources between the Centre and the provinces in another part of this Memorandum.

#### *C.—The Governor General in Council.*

59. We now turn to the difficult subject to the Central executive. Our colleagues have discussed the various alternatives ranging from handing over forthwith all subjects except defence, foreign affairs and political relations to responsible Ministers chosen from the Central Legislature with a provision to transfer these three excluded subjects to responsible Ministers after a term of years to variants such as giving discretion to the Governor General to include some officials also in his Cabinet, the remainder being

selected from the Federal Assembly. Generally speaking, some measure of responsibility to the Central Legislature in the Cabinet at the outset combined with some element of dyarchy or dualism or exclusion as regards certain subjects is advocated.

60. We have given the matter most careful thought; and while we hold that the eventual development at the Centre must be in fulfilment of the letter and spirit of the declaration of August, 1917, we are impressed with the insuperable difficulties of adopting a scheme of full responsibility in this transitional stage, during which the constituent provinces of British India are being established in their new and wider fields of autonomy in provincial affairs. The other difficulties of the transitional period have been sufficiently clearly stated by us in paragraph 6 of the introductory section of this Memorandum. To us the clear need during this period is of a stable executive Government. Admitting this need—and we consider it a real need—we see no real half-way house in between a scheme as suggested by the Commission where there will be a Unitary Cabinet, swayed and inspired by the Central Legislature and with “responsive” elements, but responsible to the Secretary of State and Parliament, and a Unitary Cabinet fully responsible to an Indian Central Legislature, which is the eventual goal but which we consider not to be practicable in this transitional stage; and while we hold that any tardiness on the part of the States should not prevent the completion of the best scheme of Federation and responsible institutions for British India at the Centre, the reality of the effect of federation and the impact and influence of the provincial units on the Centre has admittedly still to develop and make itself felt before the step to completion can be taken. Indeed, the completion can only fittingly take place, when it is established that the full responsibility in provincial affairs in the constituent units has justified its institution.

61. While we admit that there is the force of Indian sentiment in favour of the introduction of some responsibility at the Centre, that such a step might ease political tension and that there is advantage in placing the critics of the Central Government in the position of shouldering some of the odium of the difficulties of administration themselves; yet at the moment it seems to us that sufficiently large risks are being taken by the wholesale transfer of responsibility in the provinces, and simultaneous risk should not be taken elsewhere. For example, to take one instance out of several that occur to us, when Finance is being handed over to responsible Ministers in the provinces, if simultaneously the finance policy of the country, which depends largely on borrowings in and out of India, is freed from Parliamentary supervision, there may be a shock to public confidence. Later, if it were established that the transfer of Finance in the provinces had involved no catastrophic results and if, meanwhile, satisfactory Reserve Bank arrangements had been made, the change as regards Finance in the Central Government could be carried out.

62. We, therefore, adhere to the plan of the Commission for this transitional stage. The next step after this and prior to

complete devolution may well be a very full measure of responsibility reserving only the army, the States and external affairs under the control of the Governor General.

63. In order to make this transitional scheme work smoothly, we consider that, although the Central executive will clearly remain responsible only to the Secretary of State and Parliament, a responsive spirit should animate the position and Central Legislature should feel that the angle of view of the Federal Assembly is given due weight in the treatment of such subjects as Commerce and Finance. The situation would be assisted by the use of the discretion, suggested in paragraph 173, vested in the Governor General of including elected members of the Central Legislature in his Cabinet and by gradually increasing, so far as may be possible, the system of convention or a practice by Parliament of refraining from intervention in purely Indian affairs, which is discussed in paragraphs 351 and 352.

64. Some of our colleagues have suggested that if the executive is to be responsible to Parliament and not to the Central Legislature, its members should continue to be appointed as at present, that is by His Majesty on the advice of the Secretary of State; but we consider it to be of the essence of the Commission's proposals with a view to increasing responsive tone in the executive at the proper moment, that the Governor General, who will have his hand on the pulse of the Indian situation, should be unfettered in exercising the discretion and initiative in making appointments of the nature suggested in paragraph 173.

65. We are in agreement with the suggestions made that there should be included in the Governor General's Council a member with a light portfolio who would be charged with the primary function of leader of the House. Among other matters which might come under his special purview are the steps taken to secure a better understanding among the public of the policy and administrative programme of the Government on the lines discussed in Chapter 5 of Part IV of the Report. Incidentally, we may observe that we find ourselves in complete agreement with the suggestion on page 166 with which the Chapter closes.

66. Very considerable use has been made in this Province of Standing Committees of the legislature. While in the past at the Centre the Public Accounts Committee with its statutory powers and the Standing Finance Committee have played a conspicuous part, we believe that, generally speaking, the Standing Committee system has not been greatly used. We believe that in the new Constitution its use should be extended and that it would help both to keep the executive informed and responsive and also create a better understanding in the Federal Assembly of the exact purport and administrative difficulties inherent in various Government measures.

67. It has been urged that in the position at the Centre, as devised by the Commission, there are great possibilities of friction and deadlock between the executive and the legislature. The Federal Assembly will be larger and the nominated element pro-

portionally smaller than in the present Legislative Assembly. It is true that in actual composition the element of indirect election by the Federal units seems likely to return a different and possibly more temperate class of member. It is a fact also that the Commission envisage that the impact of the influence and views of the Federal Assembly on the Central executive will be considerable. Nevertheless, it appears to us to be a matter for consideration whether a smaller number in the Federal Assembly would not lessen the difficulties which may occur. The argument that in such case members would represent too large a constituency to maintain touch hardly now holds good, because it is proposed that they should be indirectly elected by provincial legislatures, which are themselves elected by reasonably small constituencies.

#### *D.—Relations between the Centre and the Provinces.*

68. We are in agreement that so far as the limited special overriding powers of the Governor are concerned (paragraph 49) and his special powers in a state of emergency (paragraph 65), he should be subject to the superintendence, direction and control of the Governor General and through him of the Secretary of State. We have already assumed that while the Governor General in Council will address the local Governments in regard to the subjects defined in paragraph 182, which have been specially made their concern in relation to provinces, it will not be proper for the Governor General in Council to move the Governor to act under the fourth item of the special statutory power, with which it is proposed he should be vested (See item 4 of paragraph 50). In such cases it will be for the Governor General to decide whether he should move a Governor to exercise his special power.

69. As regards the field defined in paragraph 182, the seventh and eighth categories might well be considered to be included in the first. One of our colleagues considers that the fourth item (raising of loans) is stated in too general terms. We will return to this point in dealing with Finance.

70. We welcome the flexibility which the suggestions in paragraphs 184 to 186 introduce, and believe them to be in the general interest and to mutual advantage. One of our colleagues feels some doubt whether a system of grants-in-aid from the Centre to the provinces may not prove demoralising to the latter, and whether in the end this may not involve some dictation by the Central Government as regards the recruitment of Agricultural, Educational and Public Health services. So far as we can judge, the giving or taking of grants is to be a purely voluntary matter on both sides, and will rest entirely on the basis of agreement. In these circumstances we see no reason to apprehend any undesirable encroachment in provincial spheres.

71. With reference to paragraph 190, there has been some doubt in the past as to where residuary powers reside, *i.e.*, what authority has the discretion to deal with matters not specifically defined as falling within the Central or Provincial fields. Unless these powers are retained by Parliament, we consider that doubts

should be set at rest by declaring that they vest in the provincial Governments.

## VI.—THE QUESTION OF DEFENCE AND THE ARMY.

### (REPORT, PART V.)

72. It is with some diffidence that we offer observations on this subject. Our excuse is that we believe that the proximity of this Province to the vulnerable North-West Frontier makes the people of the Punjab perhaps more conscious of the need of an efficient army and of the imperial implications of the defence problem than those of some other provinces, and that the connection of the military classes of the Punjab with the Indian Army, in which they form a large and important element, makes the subject one of special interest to various classes in this Province.

73. We have already stated our general view as to the fundamental requirements of defence and internal security in paragraph 7 of Part I of this Memorandum.

74. We have not found the scheme propounded in Part V of Volume II of the Report easy to understand, as apart from the arguments in support of the principle, it is only sketched in general terms; but its main features seem to be:—

- (i) that the forces composing the Army in India should no longer be under the control of the Government of India, but would be under imperial authority, *i.e.*, that of the Viceroy acting with the Commander-in-Chief (paragraph 209, Part V);
- (ii) that the Central Legislature (as now) would not vote supplies for the army, though a sum would be charged on Indian revenues under the certificate of the Governor General. This would apparently be a fixed sum subject to revision at intervals, and some hint is given of the possibility of some contribution from imperial funds ("an equitable adjustment of the burden of finance"); (paragraphs 209 and 210).
- (iii) The Commander-in-Chief would no longer be a member of the Cabinet or in the legislature; (paragraph 170).
- (iv) Questions of defence, so far as they come before the legislature, would be dealt with by a Civilian (the Army Secretary or the Leader of the Federal Assembly); (paragraph 170).
- (v) The touch of the members of the Federal Legislature with defence and army questions would be maintained by a Committee on Army Affairs on which the Central Legislature and the Indian States would be represented; (paragraph 210);
- (vi) There would be steady and sympathetic progress, subject only to the overriding requirements of military efficiency, with the Indianization of the army; (paragraph 211);

(vii) There is a possibility (not fully explored) of the Indian Government, in co-operation with the Central Legislature, embarking on the organization, training and equipment of certain military forces independently paid for and controlled, though the probability of financial resources for such a parallel project appears remote, (paragraph 211). As regards the last item the probability seems so remote that for practical purposes it appears to us that this suggestion may be disregarded.

75. An inseparable feature of Indian political aspiration is a conviction that its ideals of a fully self-governing India can only be realized in the end if it sees clearly in front of it the eventual emergence of a Dominion Army in its own command and control. At the same time it has been clearly recognized by many schools of Indian political thought that during a transitional period there are some things which it may be found desirable at the outset to remove for the time from the sphere of a responsible Central Government, or in regard to which the Governor General may need to be invested with special powers, as for instance, Foreign affairs, Relations with Indian States and Defence. The difficulties which the Commission feel in placing the army under a unitary Cabinet, with joint responsibility, have been fully explained by them in the arguments which end with paragraph 208 of Part V. This Cabinet, as we have already seen, may include at an early date "responsive" members of the Federal Legislature (paragraph 173), and its eventual development must no doubt proceed towards the ultimate goal of representation and responsibility described in the declaration of the 20th of August, 1917, though this part of the picture, as explained in paragraph 3 of this Memorandum, has not yet been painted-in. The Commission make it clear that the inclusion at the outset of an official charged with responsibility for the army in the unitary Cabinet would not overcome their difficulty. There is thus, on the one hand, some common ground of agreement; and while there is likewise some conflict, in our opinion that divergence between two angles of view is not insuperable.

76. The common ground is the admission that in the transition period exclusion of the army in India from control by Central Government and Legislature must occur in some form or other. The difference is as to what intention is in the meanwhile to animate the treatment of the subject during the transition period. Indian political opinion desires to be convinced that decisive steps will be taken to speed on Indianization and the creation of a Dominion Army. It also desires assurance that the Indian Central Legislature and Ministry in the meantime and during the process will not be divorced from touch with the facts regarding the organization, cost and management of the army in India, and that its connection with army affairs will be sufficiently intimate to secure that in the ultimate stage, responsible Indians will be possessed of the requisite knowledge and familiarity with defence policy to enable their Central Government in the fulness of time to take over the responsibility and control of a Dominion army and defence.

77. There is no lack of appreciation that an effective Indianized Dominion Force will take time to create, or in the Punjab at any rate—that an inefficient defence force, however, seductive and soothing its presentation on paper may seem, is money wasted on an ineffective insurance in face of a real frontier menace. It scarcely requires a slight effort of imagination to understand that with the most senior Indian King's Commission officers in regular Units now at a standing of only 8 or 9 years' service and only now beginning to be eligible to qualify for admission to the Staff College, and with Indianization more backward still in the technical branches (though admission to Woolwich and Cranwell is now open), the evolution of a number of largely Indianized units officered and commanded mainly by Indians, organized into Brigades and Divisions with a considerable Indian element on the staff, is a matter which will take time. It is also understood that no shorter time can conceivably suffice to educate and qualify Indians to attain these capacities than is needed for the attainment of a similar degree of capacity and experience in these ranks by their fellow British officers. Yet there is a feeling that sufficient efforts are not being made to increase the intake and proceed with the project on a larger scale. The eight-Unit scheme seems to be a jejune response to India's impatience to get on with equipping herself for the responsibility of her own defence. No doubt the answer is that, keeping in mind the supreme need of efficiency, satisfactory officer candidates are not forthcoming under the present system in sufficient numbers. It is, however, believed that generally speaking it has been found possible to accept as good material a satisfactory proportion of the youths trained at the Dehra Dun Military College. Opinion in this Province, which has good reason to believe in its stock of military material, would welcome the establishment of other Colleges elsewhere on more economical lines with this purpose in view; and it is believed that, given their establishment on a basis where the expense to parents would be on a more modest scale than is the case at present, enough youths of the right type would be forthcoming to fill all available vacancies at Sandhurst and later possibly to feed an Indian Sandhurst. While we cannot pretend to have the knowledge to dictate on so technical a subject, we wish to lay emphasis on the need for exploring the line of progress which we have suggested. It is in the families of the small squires, which have honourable connection with the Indian Army, often extending over three generations, that real material can be found. This class has not the means to pay for expensive education for their sons; but if institutions can be provided, which specialise in preparation for Sandhurst, etc., and supply a sound education with ample attention to character formation and discipline on inexpensive lines, this class will gladly avail itself of the opportunity to fit its sons for a career in the Army. Public opinion here will not rest content with the vague and general terms of the Commission's recommendations that "we consider that this obligation (Indianization) should continue to be honoured in the letter and the spirit, if the army in India were to pass, as we suggest, out of the control of the Government of India".

78. As regards the other point, transitional requirements would be met by making the Committee on Army affairs a reality. Indian members of the Governor General's Council should be included in it as well as members of the Central Legislature; and the points, on which its advice will be sought, should range over a field sufficiently wide to keep it in close touch with the realities of problems of defence and army organization. Nor should there be undue restriction as regards the scope of discussion of defence problems, within which the Central Legislature, within reasonable limits, should have discretion to debate on such measures, with due provision through powers vested in the Governor General to preserve for Parliament complete control in ordering the conduct of defence measures. On the occasion of such debates it might be desirable to nominate military experts to expound technical considerations.

79. The only comments we have to offer on paragraph 213 of Part V is that the Commission appear to have forgotten the provisions of Chapter IX of the Code of Criminal Procedure. These provisions give a discretion to a magistrate where a disturbance of the public peace has actually broken out, to call on His Majesty's army to disperse an unlawful assembly by force, and a statutory obligation is laid on members of His Majesty's forces to obey the requisition, though the manner in which they elect to do so is left to their discretion. In this case the magistrate is acting not at the dictation of the *local* Government but in a magisterial capacity under responsibility to a High Court of Justice appointed by the Crown. We consider it important that this discretion should not be altered. In practice, unless the emergency is grave and sudden and the disturbance of peace serious, the District Magistrate ordinarily refers by message, telegram or telephone to the Commissioner or local Government before making his requisition to the military for aid to civil power; but there is no statutory obligation on him to do so; and if the insistence of the seriousness of the actual disorder and disturbance of the public peace is great, it is most undesirable that his discretion should be hampered. His immediate duty, whatever the cause of the disturbance, is to restore order and peace at the earliest possible moment, and if life is to be saved and spread of disorder prevented, this can often only be done by very prompt action. The ordering of a show of military force before actual disturbance takes place, or after a disturbance, stands on a different footing, and can now only be effected by the order of the local Government; and in this case we are in agreement with the views as to the proper procedure which are expressed in paragraph 213.

80. Some of our colleagues have suggested, among two possible alternatives to the scheme of the Commission, the subjection of the Indian portion of Army in India to the Central Government and Assembly's control, or the establishment of provincial militias at the call of Ministers in charge of law and order in the provinces. The first of these alternatives appear to us impracticable. Army organization rests on a basis of common staff, inspecting agencies, supplies of equipment and mobilization stores, and any attempt to separate the army into two parts for administrative purposes would



be likely to prove both expensive and inefficient. As regards the second alternative, whether in the form of an embodied force or of a reserve, the proposal amounts to little more than an increase in the Police forces of the province, which it will be at the discretion of the Minister in charge of law and order in a province, given good grounds of necessity and sufficient financial resources, to compass as part of his policy. The constitution of such a force might lessen the number of occasions on which it was found necessary to call on His Majesty's Forces in India to act in aid of civil power in internal security, but it would not in any way help to solve the main political and constitutional problem of the treatment of defence and the army in India with which we have been dealing.

## VII.—FINANCE.

### (REPORT, PART VIII.)

81. We do not propose to attempt to deal with the details of Sir W. T. Layton's scheme or to sit in judgment on them at this stage. That will be a task for the Finance departments of the Government of India and of local Governments to complete in collaboration and for which more time is required than is at present at our disposal. At the moment we lack the necessary data for thorough scrutiny. It may well be that expert examination may subsequently establish that the expectations of revenues from Central sources of taxation and income and of economies in the growth of Central expenditure have been framed on an unduly optimistic basis and that the yields expected from taxes, from which the provinces will benefit, have been rated too high. Discretion may dictate that greater caution must be exercised touching the time at which the salt tax can be handed over to the Provincial Fund and that Sir W. Layton may be found to have been too sanguine in this regard. Naturally the reserves in the field of taxation which the Central Government can tap in the event of war or Frontier expeditions, will also need careful exploration; and this examination may affect some matters, as for instance the percentage of surcharge which provinces can be permitted to levy on income-tax. We also clearly realize that under Sir W. Layton's scheme the proportionate increase in revenues in the Punjab will be markedly less than that accruing in other provinces, *e.g.*, Bihar and Orissa; and that on this score the results are not so satisfactory to us as they might be.

82. Nevertheless, we heartily approve of the general principles and main features of the scheme. It recognizes the need of the province to expand especially in nation-building activities and the obstacles, which the restricted power of taxation under the present system and the limited scope of existing internal resources places in the way of its desire. We welcome the opportunity which the scheme provides for tapping other outside sources. One of the difficulties of the present position has been that, whenever the province felt the need of additional resources, these could only be raised to the extent desired by placing burdens on the rural and

landed interests. From this aspect we welcome the suggestion that the province should receive one-half of the income-tax on personal incomes and have the discretion, in addition, to levy a surcharge on personal incomes. We also strongly feel that in a province where even the smallest land holdings pay land revenue, we should have the discretion to tax incomes, not derived from land, below the present exemption limit of Rs. 2,000. We are also of opinion that there is great force in the suggestion in paragraph 268 regarding the taxation of incomes from foreign investments.

83. As regards the new provincial taxes which are suggested, we feel that in this Province without a complete change of system there is no likelihood of the project for the taxation of agricultural incomes being adopted. In the presence of many small holdings the yield is likely to be poor and hardly worth the friction and trouble which its assessment and collection would involve. If public opinion at some future time fastens on a readjustment of the land revenue system, it is more likely to take the form of lightening or removing the burden on very small holdings and compensating revenues by placing the burden thus removed on to the shoulders of the larger landholders. As regards death duties also, it seems unlikely that the preponderating land-owning interest in this Province will be prepared to subject itself to this form of impost, though it is possible that, given adequate taxation of urban and professional incomes, an enhanced charge by way of mutation fee on transfers of landed property might be accepted. We are sceptical about the practicability of terminal taxes. If they are levied on imported goods, in many cases the goods will have already paid to the Central Government customs duties or excises, and will also have paid octroi or terminal taxes imposed by local bodies. It seems hardly possible to place an additional charge on them to benefit a local Government. Such a charge would also, we observe, probably react unfavourably on railway earnings, and would be very expensive to collect. We are in favour of removing the limit for local cesses on lands in the case of district boards. We approve in principle of the proposal to tax tobacco. We feel some doubt as to the possibility of any considerable return from a tax on matches; for, while in the case of tobacco, the location of the factory is to some extent fixed by convenience of proximity to a source of supply, and will in practice be confined to tobacco-growing centres, the same consideration does not apply to the establishment of match factories; and the latter may be transferred into Indian States, if excises are imposed, with resulting complications. We also feel some doubt whether caution is not needed to prevent taking measures which may operate to stifle a nascent Indian industry though probably a moderate excise would be paid by the middlemen and not react on consumption.

84. Some doubts have been expressed as to whether it is quite clear that provinces will have full discretion to use all revenues accruing to them, including those from Central sources, on such objects as they desire. We feel that this freedom of discretion is sufficiently clearly intended and expressed.

85. As regards distribution of taxes which pass into the Provincial fund, we are of opinion that the only just and automatic test is that of population. If any surplusage outside this principle is to be allowed, it should rest solely on grounds of Central interests and might take the form of a subvention to provinces for the education of the children of the military classes in proportion to numbers from each province serving in the Indian Army.

86. As regards the federal implications of the constitution of the Provincial Fund, the machinery by which it will be fed and the safeguards against the initiation of changes in the taxes coming within the scope of the Fund or alteration in allocations to the Fund of particular taxes, we find ourselves in general agreement with what is proposed in paragraphs 305—307 of Chapter 7 of Part VIII of Volume II. Until the final composition of the Federal Legislative Assembly is determined, we find it difficult to decide whether in effect the provision requiring the expression of a desire by the Finance Members of more than three provinces as a condition precedent to the initiation of a change in the taxes within the scope of the Fund is sufficient. We consider it essential that there should be adequate safeguards against the more populous provinces imposing their will on the majority of the provinces, which appears to us to be a necessary condition of a Federal system. It will also be necessary to provide that changes do not operate to inflict too sudden and severe a change in provincial budgets, and in this connection it would appear desirable to lay down that changes by way of reduction should only take place, at earliest, a full year after the date on which they pass the Federal Assembly.

87. We note that paragraph 306 of the Report has to be read with paragraph 163. When a national excise is just imposed a simple majority vote of the Federal Assembly is sufficient. When a source of revenue already allotted is to be taken away from the provinces, this can only be done by a simple majority vote of the Federal Assembly combined with a simple majority vote of the representatives of two-thirds of the provinces. Where it is a question of altering the distribution among provinces, a majority of two-thirds, of the members of the Federal Assembly and also a simple majority vote of the representatives of two-thirds of the provinces will be necessary.

88. Paragraph 308 leaves us in some doubt as to whether power will be retained by the Secretary of State to require the submission to him by the Central or local Governments of schemes involving large capital expenditure. In that the latter ordinarily entail borrowing in London on India's credit, it is probably desirable that he should be kept in touch with such projects, so that the India Office can give the City general indications as regards their nature. As long as the Secretary of State raises loans in London for the Indian Government, some such general connection with aspects of financial affairs relating to loan programmes appears essential. Otherwise we understand that his control over expenditure will in future be limited to Army and other non-votable expenditure.

89. For the present in this province it will probably be found convenient to use the agency of the Central Government for keeping provincial accounts, though there is little doubt that the development of a provincialised Accounts Service will take place in due course. There seems no reason why provinces should pay for maintenance of accounts until the salt duty has been handed over to them.

90. As regards provincial balances, pending the formation of a Central or Federal Bank, no other course seems practicable than that the Central Government should continue to perform the function of keeping these balances under the conditions explained in paragraph 310.

91. We are strongly in favour of audit being the concern of an independent Auditor General.

92. As regards borrowing, there is a divergence of opinion, one Member of the Cabinet holding that there should be no restriction on the discretion of a province to raise a loan within the province. We feel that such freedom will be both unsound in theory and unprofitable in practice. So long as the provinces enjoy the advantage of borrowing money on the credit of India as a whole, there must be control and co-ordination of their loan operations by the centre. Sufficient touch with their needs can be maintained by the association with the Finance Member of the Government of India of a Provincial Loan Council as suggested in paragraph 311; clashes and competition between central and provincial activities in the market must be avoided both as regards the time of launching loans and conditions; and lastly in the interests of the general financial credit of both the Central Government and the provinces there must be some check on unwise and excessive borrowing by a spendthrift province. Indeed, this is the only method of ensuring a requisite degree of financial stability in the provinces, which will remain. So far as this Province is concerned, it has every thing to gain from participation in such co-ordination; for even in the case of a loan within the province, experience has shown that Bombay and Calcutta find the bulk of the money; and the province would have to offer extravagant and uneconomic terms, if it ever desired to compete with the Central Government or the Presidencies in its appeals to the money market.

## VIII.—THE SERVICES.

### (REPORT. PART IX.)

93. As regards the recruitment of the security services on an All-India basis by the Secretary of State, we are strongly of opinion that it should be continued during the transitional period on the existing basis as suggested in paragraph 329. One of our colleagues has advanced the view that even during this period and in the case of these services, there should be wholly provincial services recruited by a Public Services Commission and entirely

controlled by the local Government. Another suggested adopting the scheme advocated in paragraph 329 for 10 years and then reconsidering the question of proportions, method of recruitment and control. We prefer not to modify the system put forward in paragraph 329 in this respect. During the transition period we lay great stress on the wisdom of keeping the All-India system, recruited by the Secretary of State with its wider field of choice and the status, tradition and security which attaches to a regular service with fixed prospects and rules, under the Secretary of State's control. It may in some degree represent a constitutional anomaly; but we consider it essential in the transitional stage. We believe in its utility for securing an Indian element of superior capacity and, so far as the European element is concerned, we do not think that recruits of the desired type would be attracted if recruitment by or on behalf of an authority in India was carried out by a Public Services Commission in India or the High Commissioner in London. We do not wish to imply that this should be the method followed as a permanency; but from the point of view of recruitment, it is important that there should not be any short period fluctuations or changes; so the period fixed before reconsideration takes place should be sufficiently long. We suggest that the date for reconsideration might be fixed as 1949, the date by which the Lee Commission scheme for the completion of the Indianization proportions of the Indian Police Service will in theory finally materialise. We agree that as regards proportions of Indianization we should adhere to the rate fixed by the Lee Commission.

94. As regards the Forest Service, we agree that future All-India recruitment may be discontinued. As regards the Irrigation Branch, however, we are strongly of opinion, in spite of certain considerations to the contrary placed before us by our colleagues, that we should retain a substantial element of Europeans recruited on the basis and safeguards of an All-India Service in its gazetted ranks. The net income from irrigation forms more than a third of the total revenue of the province, and the place it occupies indirectly in the general economic prosperity of the province and as an asset in the well-being and contentment of the people of the province can be rated on general considerations at a much higher figure than its arithmetical value in the financial resources of the province. We have too many eggs in this basket to risk losing an element which, past experience shows, conduces to the more efficient preservation and profitable extension of our great irrigation system. In the Punjab the Irrigation officer is more than a technical officer. His efficiency and initiative is a factor for internal stability practically on a plane with that of the officer in the security services.

95. In view of our recommendations in regard to the security services and the Irrigation Service, which involve the retention of some European element with definite service rights, we find ourselves in agreement with the provisions as regards medical treatment which are explained in paragraph 333.

96. As regards safeguards for existing All-India officers, we approve of the proposals made in paragraph 332. We are strongly of opinion that the right of retirement should remain open without limit of time to all officers belonging to All-India Services who may be serving when the new Constitution is introduced.

97. As regards future recruits, it is proposed that they should enjoy the same rights, privileges and safeguards in which the existing members of All-India Services are secured by the recommendations in paragraph 332 and have the same safeguards for their continuance. The Commission make one exception about the right of premature retirement. We discussed for some time the obvious fact that the new recruits would join with sufficient knowledge of future conditions and that unless some change was introduced after their recruitment, it would be illogical to let them have this right. At one time we inclined to the view that new recruits should be allowed to exercise the right up to 5 years from appointment. The question of a reciprocal right of forcing compulsory retirement within this period was also discussed. Further thought convinces us that, as far as Europeans are concerned, the acid test is the practical one, *viz.*, whether, if the new recruits are not offered a more extended right of retiring on proportionate pension, recruits will be forthcoming and recruits of the right type. The answer seems to us to be in the negative, and for this reason we think the unlimited right should be maintained. We are aware that the benefits of the present rule may in some cases be abused, and that the position is sometimes felt to be unfair, *i.e.*, it should involve a power by Government to retire undesirable officers. We feel, however, that a discretion to impose compulsory retirement will injuriously affect the idea of service security. We have thought of the possible advantages, in these circumstances, of securing new recruits on provident fund terms. The latter, however, while suitable for a technical officer, such as an Engineer or a Doctor, are of little practical value in the case of the Indian Civil Service or the Indian Police Service, whose knowledge and experience have no professional value in the employment market on retirement.

98. We must now turn to the attitude which the All-India Services themselves are likely to adopt to the proposed changes and safeguards. We are aware that some service associations in N. W. India placed representations before the Simon Commission to the effect that if all provincial subjects were recommended for transfer, the logical development was to wind up the All-India Services in the provinces and give them proportionate pensions and compensation for loss of prospects and career, as in the case of the Egyptian Services.

99. There has not been time for consultation on this occasion; but His Excellency the Governor requested the All-India Service Secretaries and Heads of Departments at Simla who included in their ranks officers of the Indian Civil Service, Indian Police Service and Indian Service of Engineers (both Irrigation and Buildings and Roads branches), to meet and give him their views on the

portion of Part IX of the Report containing recommendations regarding the future position of members of All-India Services.

100. The views, at which they arrived after discussion, are attached to this section as appendix A. It will be seen that they feel apprehension that the conclusions reached by the Commission in the closing portion of paragraph 332 will not really give them the security they require as regards pensions and funds. Though this may seem unduly apprehensive in the transitional stage, while pay and pensions are not votable, and authority is retained from the Secretary of State downwards through the Governor General, the Governor General in Council, and the Governor, ending with the latter's special powers to secure appropriation (item 3 in para. 50, page 36) to ensure their rights to payment of dues, their conclusions are, we believe, representative of the present feelings in our All-India Services. In short, at the back of their minds there is an idea that, while the Secretary of State can hardly visualise that it will be ever out of his power to carry out obligations, situations and circumstances may arise when he will not be able to place himself in funds to do so. They argue that to pay the necessary capital sum, subject to readjustment, for each official's pension when he retires, would not be unduly burdensome, and would remove the feeling of insecurity. As regards family pensions and funds, the case for their transfer to a fund with the Secretary of State in the case of Europeans seems to them even more insistent and logical, for in these cases the money is even more clearly than pensions (even if pensions are classed as deferred pay) their own money. The views as regards rates of provident fund appear to be reasonable. We commend generally the opinions expressed to the notice of the Government of India, because the feeling of anxiety in the matter is undoubtedly genuine and acute and may have serious repercussions, as for instance starting the new regime with grave depletion in the ranks of the experienced section of the All-India Services. We observe that the matter referred to in III (2), the claim for compensation for loss of career in addition to premature pension was specifically considered by the Lee Commission and rejected by them as unjustifiable.

101. The recommendations in paragraph 335 were approved, though it was felt that the amount of pension in each case should be governed by length of tenure of the appointment.

102. It was agreed that the appointment of a provincial Public Services Commission was desirable. It was advocated that the members should be appointed by the Governor for 5 years, and should be removable only by order of the Governor General so as to ensure a feeling of independence from control of local authority.

103. Some doubts have been expressed by some communities regarding future recruitment to the provincial and subordinate services, as to how far there is assurance, that the principle observed in the past that, keeping in view the claim of efficiency, no one class should be permitted to monopolise the services to the detriment of the just and reasonable claims of other sections of the

community, will be followed in future. The answer, in our view, is that difficulties would attend any interference going beyond enquiry and advice by the Governor in future as regards individual appointments by Ministries; but if their cumulative effect is of a nature to come within the purview of the second of special powers [item (2), paragraph 50, page 36] he would be bound to act and should act. Fixed percentages or recital of rights in Statute appear to us to introduce an element of undue regimentation; and the general remedy of the Governor's special powers, if a little vague in definition and in character ameliorative for the future rather than revisory as far as the past is concerned, must suffice to correct tendencies.

## IX.—THE HIGH COURTS.

### (REPORT, PART X.)

104. In dealing with the problem of the transfer of law and order in the Memorandum prepared for the Simon Commission by the Punjab Government the official members of the Government made the following observations:—

“The administration of justice presents problem peculiar to itself. The actual dealing of justice, whether the conviction and punishment of offenders or decision of civil suits, will remain the task of a body independent of the executive government. It is only in matters subsidiary to the dealings of justice that the executive government is concerned, such as the appointment of judicial officers, their transfer and, in the last resort, their removal or punishment, and in the provision of funds necessary for carrying out the administration of justice. Here the chief problem is that of keeping justice out of the field of politics, and it will be seen from the comments of the High Court in Chapter VIII of Part I, that it is chiefly in the sphere of patronage and the communal composition of the judiciary that the impact of politics has mainly been felt. Here again it is the communal question which presents the chief difficulty; it will for many years present a problem which it will be impossible to ignore, especially in a population with whom the question of the personnel of the Judicial Service is a matter of acute interest.” (Paragraph 24 of Part II, Volume II, P. G. Memorandum.)

105. The question of the High Court naturally divides itself up into three Parts: (i) the appointment of the Judges, (ii) the administrative control over the High Court which includes financial provision and (iii) the administration of the subordinate judiciary.

106. As regards the first part, the present practice is that the appointment of permanent Judges is made by the Crown, the



appointment of additional Judges is made by the Governor General in Council, and the appointment to officiate as Judge in a temporary vacancy is made by the Governor in Council. The number of permanent Judges and additional Judges is fixed under the orders of the Secretary of State or Governor General in Council respectively as the case may be. As regards the first two classes of Judges, in practice the convention is that the Governor after consulting the Chief Justice forwards the views of the latter with his comments to the Governor General. The latter then enters into communication with the Secretary of State as regards permanent appointments or disposes of the matter with the Home Department of the Government of India in the case of additional appointments. So far as we understand the Commission propose no change in this procedure except that the appointments to officiate in a temporary vacancy should be made by the Governor General after consulting the provincial Governor. We are in agreement with the recommendations of the Commission, as we consider it important with a view to securing, so far as may be possible, independence from local political influence that members of the Bench should owe their appointment to an authority outside the province. We are conscious that our view differs from that set forth by the Punjab Reforms Committee which advocated that appointments should be made by the Crown on the recommendation of the local Government, and that a Judge should be removable on the joint recommendation of the Governor and local Legislature concerned.

107. When we turn to the second part, the administrative control over the High Court, the present practice is that the High Court, apart from the actual dealing of justice in which domain they are entirely independent, have certain functions vested in them (*i.e.*, in the person of the Chief Justice) by Letters Patent, as for instance in connection with their establishments, but are in practice actually under the administrative and financial control of the Governor in Council; that is they may put forward scales of staff, changes and additions in buildings, questions connected with records and printing in the High Court, for which the Letters Patent give them a degree of discretion, but the Governor in Council may find it impossible to provide for these items in the budget. The actual salaries and pensions of the Judges of the High Court (and of their Registrar, when he is a member of the I. C. S.) are non-votable, but are a charge on provincial revenues, the whole of the rest of the High Court expenditure and the expenditure on the civil courts (except non-votable salaries) is votable provincial expenditure. The local Government is likewise in control of those subsidiary matters to the dealing of justice to which we have referred in the first paragraph of this section.

108. The Commission recommend that the administrative and financial control of the High Court and its establishments, buildings, contingencies, etc., should be assumed by the Governor General in Council and that these matters should be a charge on Central Revenues which would be reimbursed to some extent by making High Court fees a source of Central Revenue. It is pro-

posed that the functions of the provincial executive in connection with the administration of the subordinate judiciary, and their relation with the High Court in this connection should remain unchanged.

109. The Hon'ble Judges of the Lahore High Court have expressed their general agreement with the proposals of the Commission, and a copy of their letter is attached as appendix B to this Memorandum. We have given the matter careful thought, but are unable to find ourselves in agreement with the High Court and the Commission on this point. Though we would naturally welcome the relief to provincial finances which the suggestion involves, we feel that the loss in other respects outweighs the possible advantage. We see risk of friction and growing aloofness which would not be in the best interests of the Province. In the Court itself we fear that amenities and scales of establishments would tend to be set up which would be out of proportion to those fixed for persons, departments and establishments of a somewhat similar character at the headquarters of provincial Government and have unsettling repercussions. While the necessary and proper judicial independence seems to us to be secured by the power of appointment and removal of Judges being vested in an authority outside the province, we apprehend that the additional (and in our view unnecessary) sense of independence, which must result from the Commission's suggestions on the administrative and financial side, might destroy the intimate and close relations between the Court and the local Government in connection with the personnel discipline and working of the subordinate judiciary which in our view it is so essential to maintain. Friction in regard to these matters would have reactions prejudicial not only to the working of the subordinate judiciary but also to the confidence of the public in the administration of justice. The High Court have already complained of the criticisms on the administrative side of their work which are occasionally made in the legislature. Even under the system proposed in the report of the Commission opportunities for such criticisms would remain, *e.g.*, in connection with demands for grants connected with the subordinate judiciary. In our view these criticisms would tend to increase in proportion as any portion of this administration is removed from the purview of the responsible provincial executive; and their disappearance can only be secured by even more close co-operation in these matters between the highest judicial and executive authorities in the province.

## X.—RELATIONS BETWEEN THE HOME AND THE INDIAN GOVERNMENTS.

### (REPORT, PART XI.)

108. We consider it reasonable that the control of Parliament within the provincial field should be restricted to matters in which special powers are reserved for the Governor and be exercised through the Governor General.

## APPENDIX A.

(See paragraph 100.)

*Proceedings of a meeting of Secretaries to Government held in Chief Secretary's room on the 19th July, 1930.*

## I.—SECURITY OF PENSIONS.

*Paragraph 332 of Simon Commission's Report.*—"Pensions are really in the nature of deferred pay."

*Recommended—*

- (a) that statutory force be given to this declaration;
- (b) that financial security for the pensions of officers appointed by the Secretary of State be maintained in London, preferably by making them a charge on the Consolidated Fund. If this recommendation is not accepted, then recommended;
- (c) that the British Government guarantee the pensions of all officers appointed by the Secretary of State;
- (d) that the existing exchange rate (which is fixed by rule having the force of law) be maintained for calculating the sterling value of pensions;
- (e) that whatever form of security is conceded, it should be sufficient to enable insurance companies of repute to insure service pensions at a reasonable rate, *e.g.*, not exceeding  $\frac{1}{2}$  per cent. of the pension.

## II.—FUNDS.

*Recommended—*

- (a) that a rate  $1/6$  per rupee for payment of Provident Funds be secured by statutory rule;
- (b) that subscribers to Provident Funds be entitled to withdraw the whole amount at their credit for purposes of investment in insurance policies at any time and that they be entitled to receive the sterling value of the sum as it stood on the date of application. If any subscriber is not insurable at first class rates, that he be entitled to the concession mentioned above for purposes of other investment;
- (c) that sterling family pension funds be funded in London for the benefit of subscribers and their dependents.

## III.—PROPORTIONATE PENSIONS.

*Recommended—*

- (1) that the system of proportionate pensions be continued to all officers at present entitled and be extended to all future recruits appointed by the Secretary of State;

- (2) that the contemplated changes in conditions of service, particularly at the expense of the I. C. S. and Indian Police Service Officer, constitute a grave hardship on officers recruited before 1920, who are still in the middle years of their service. The proportionate pension due to an officer of 15 or 16 years' service, who is without private means and has a wife and family to support, might well be inadequate to enable him to live without seeking further employment, which it is notoriously difficult for an officer without special qualifications to find. Consequently the remedy, which the proportionate pension concession is intended to provide, may well in practice be closed to such officers; and it is recommended therefore that they should receive, in addition to the right to retire on proportionate pension, compensation for loss of career or in the alternative for having to continue to serve under conditions altogether different from those which induced them to join the service.

IV. The meeting endorsed the recommendation of the Simon Commission regarding medical relief for European Officers and their families.

V. The meeting ventured to point out that the ability of Government to secure the pensions and funds of the services will be gravely imperilled if the Irrigation Department ceases to be recruited by the Secretary of State.

---

## APPENDIX B.

(See paragraph 109.)

No. 5352-A/IV-A.-9, dated Lahore, the 19th July 1930.

From—E. A. R. EUSTACE, Esq., I.C.S., Registrar of the High Court of Judicature at Lahore,

To—Miles Irving, Esq., C.I.E., O.B.E., Additional Secretary to Government, Punjab, Simla.

With reference to your letter No. 2646-S.-Reforms, dated the 5th of July 1930, I am directed to say that the Hon'ble the Chief Justice and the Judges agree generally to the proposals contained in Part X of Volume II Report of the Indian Statutory Commission. They suppose, however, that just as judicial salaries are proposed to be made a charge upon Central Revenues so, should the proposals in Part X be adopted, judicial pensions would be made a similar charge.

## ENCLOSURE B.

*Memorandum containing the opinions of the Non-Official Members of the Government of the Punjab on the recommendations of the Indian Statutory Commission.*

## CONTENTS.

	PAGES.
I.—Joint Minute by the Hon'ble Khan Bahadur Captain Sikandar Hayat Khan, M.B.E., Revenue Member, and the Hon'ble Malik Firoz Khan Noon, Member for Local Self-Government	516—522
II.—Minute by the Hon'ble Sardar Sir Jogendra Singh Knight, Minister for Agriculture	523—533
III.—Minute by the Hon'ble Mr. Manohar Lal, Minister for Education	533—551

*PART I.—Joint Minute containing the opinions of the Hon'ble Captain Sikandar Hayat Khan, M.B.E., Revenue Member, and Malik Firoz Khan Noon, Minister for Local Self-Government.*

In depriving the Muslims in Bengal and the Punjab of their legitimate share of representation in the Provincial Legislatures the Indian Statutory Commission has failed to do justice to the claims of Muslim India. Its conclusions in paragraph 85 of the Report are based on the ground that it will give them (Muslims), "a fixed and unalterable majority of the 'general constituency' seats in both provinces". The argument fails to carry conviction in face of the obvious fact that the Hindus, in spite of giving weightage to the minorities, will remain perpetually a substantial and unalterable majority in the other six provinces. Apart from its being obviously unfair to the Muslims of Bengal and the Punjab and its prejudicial effects on the rights and interests of Indian Muslims, the proposal appears to us to be in conflict with the main scheme for establishing a federal form of government propounded in the Report. We find it difficult to reconcile this particular item in their recommendations with the ostensible desire on the part of the Commissioners, of securing to the various components, equal opportunities for internal development on lines best suited to the conditions and requirements of each unit. The Commissioners seem to have overlooked or ignored the serious implications of their proposals (in paragraph 85) which can have no other effect except that of relegating the Muslims to a position of political impotency even in those provinces in which they happen to be numerically superior. When we find that the question of Sindh has been left unsettled; Baluchistan has been denied even the rudiments of a reformed administration; and the advance proposed for the N.-W. F. Province falls considerably short of the expectations of even the most conservative elements amongst the Muslims, it is difficult to escape the conclusion that Muslim interests have been allowed to suffer not merely for lack of proper appreciation of the claims and needs of the community, but perhaps for other reasons. This conviction is further strengthened by the singularly unconvincing nature of the argument employed by the Commissioners in support of their contention in paragraph 85 of the report.

It has been suggested by some critics that in sacrificing the Muslim rights and interests the Indian Statutory Commission has made a feeble attempt to placate the majority community with a view to reconciling them to the conclusions and recommendations embodied in this Report. Whatever may be the reasons the fact remains that if the recommendations of the Indian Statutory Commission with regard to the representation of Muslims in Bengal and the Punjab are accepted the minorities will be subjected to the rule of a formidable oligarchy not only in the Central Legislature and the provinces where they are in a minority, but even in those provinces in which they are legitimately entitled to superior representation. We would be failing in our duty to the Government and the country if we do not enter a strong caveat against the adoption of a course which will result in depriving the most important minority in the country of its due and rightful share in the management of the country's affairs, both in the Central and Provincial spheres. If in spite of the repeated assurances from the Viceroy, and responsible Ministers of His Majesty's Government, the interests of minorities are allowed to be subordinated for reasons of expediency or other considerations, there will be serious repercussions which may result in further aggravating the situation in the country by accentuating the differences between the British and Indian people.

It is a matter for satisfaction to us that our official colleagues also consider the proposals contained in paragraph 85 of the report as unfair to the majority community in the Punjab; and in the concluding sentence of paragraph 30 of the Memorandum they have expressed their views in the following words:—

“but we feel that we cannot go so far as the Commission in paragraph 85, for it seems to us illogical to deprive a population majority entirely of their position.”

Although the language used is guarded; it is sufficiently clear to indicate a desire on their part, of securing to the community, which is numerically superior, its rightful position as a majority in the Provincial Legislature; though they do not contemplate going to the extent of giving them representation warranted by their numbers. But we are surprised to find that in the eventual composition of the Legislature, recommended by them, they have overlooked this consideration and have failed to carry the principle enunciated, in paragraph 30, to its logical conclusion.

According to their proposals the Muslims get two more seats than the Hindus and Sikhs combined; but will still remain in a minority in the House as a whole. We do not consider this arrangement satisfactory or in consonance with the expressed views of our official colleagues, already referred to. Muslim opinion throughout India has repeatedly and emphatically declared in favour of representation on population basis for the Muslims in the Punjab and Bengal; and we are convinced that it will be difficult to reconcile them to a figure which falls short of this demand. The Muslim Members of the Punjab Government in their Memorandum to the Simon Commission proposed 51 per cent. representation for

the Muslims in the Punjab. In reducing the Muslim strength they were actuated by a desire to meet the sentiments and wishes of Hindus and Sikhs in the province. The Punjab Reforms Committee also made similar proposals with a view to restoring harmony and giving to the Sikhs an added sense of security. It is a matter of common knowledge that the Muslim press and public took strong exception to these proposals. The recommendations of the Simon Commission on the subject have created further resentment, and the Muslim opinion throughout India has condemned these proposals in no mild terms. It is asserted that of the Muslim claims, which are essential for their existence as a self-respecting entity in the country under the future constitution, not one has been conceded by the Indian Statutory Commission. It is admitted that a federal form of government has been proposed; but it is pointed out that this can have no attraction for the Muslims if they have to play the second fiddle, both in the Central Legislature as well as the provinces.

Again, with regard to separate electorates it is said that the recommendations are hedged in to such an extent, and involve the acceptance of conditions which will reduce the Muslims to a position of perpetual minority everywhere, that they virtually amount to forcing the Mussalmans to merge into common electorates. The Muslims in the Punjab and Bengal have been given a choice between a 'dagger and the poison bowl'. According to the Simon Commission they must either accept joint electorates or else agree to give up their due share in the Legislatures. Under these circumstances some of their leaders contemplate advising the Muslims to review the situation and seriously consider whether it would not be advisable for them to give up separate electorates and throw in their lot with their Hindu and Sikh countrymen and take their chances in common electorates. It is pointed out that by accepting joint electorates their position cannot be any worse than that contemplated by the Simon Commission under their scheme. In short, the Mussalmans, not unnaturally, consider that they have once again been left in the lurch by their friends in whom they had reposed their confidence and trust. The extremists have not been slow in discerning the possibilities of turning into account the present resentment of the Muslims and are naturally directing their energies towards weaning the Muslims from their present position and ideals with a view to exploit them for their own purposes. We sincerely hope that better counsels will prevail and the British Government will not allow the impression to gain strength that Government's friends are invariably the losers in the end.

We are convinced that Muslim opinion in the Punjab will not be satisfied with anything less than their legitimate share of representation as warranted by their numbers. The proposals in paragraph 31 of the Memorandum fall short of these demands and therefore cannot be acceptable to them. (As regards the reservation of seats for big landholders Malik Firoz Khan Noon considers that the recommendations in paragraph 29 do not go far enough to sufficiently safeguard the interests of this important class. He feels that in the absence of a second chamber, and the removal of

the official *bloc*, it is essential that at least 15 per cent. of the total number of seats should be reserved for big landholders in order to get a fair element of this class in the House which will exert the necessary steadying influence; and he feels that an increased representation of this class should be secured immediately instead of deferring it till such time as the inadequacy of their representation is demonstrated by a breakdown of the legislative machinery.)

*Paragraph 24.*—To the observations in paragraph 24 of the Memorandum we would like to add that “all constituencies whether Muslim, Hindu, Sikh or others should be thrown open to members of all communities irrespective of their creed”. This suggestion was made by one of the Muslim Members of the Punjab Government in a previous Memorandum and was endorsed by the Punjab Reforms Committee. We consider that this will be a step forward towards the goal of joint electorates.

*Paragraph 43.*—While we fully endorse the views expressed in paragraph 42, we regret that we are unable to agree with the observations and conclusions contained in paragraph 43 of the Memorandum. We consider that the proposals for extension of franchise in paragraph 106 of the Report are on the whole sound. In this connection we wish to remark that one of the obstacles in the way of early introduction of common electorates is the existing disparity between the electors of the various communities. We believe that the prospects of setting up joint electorates in the near future will be considerably strengthened if this disparity is reduced.

*Paragraph 57.*—We notice that the observations in paragraph 57 of the Memorandum are to some extent in conflict with the remarks contained in paragraph 71. We consider that residuary powers should remain with the provinces and this principle should apply equally to matters in the legislative field.

*Paragraph 62.*—We consider that the second sentence in paragraph 62 is too vague. We recommend that the next step towards devolution in the Centre should take place not later than 10 years from the date on which the revised constitution comes into force in the provinces. This would give ample time to the provinces to sufficiently consolidate their position against any risk of interference from the Central Government or Legislature.

*Paragraph 64.*—We are of the opinion that the existing practice of appointing Members of the Governor-General's Executive Council under the Royal Sign Manual should continue till such time as all the subjects are transferred to popular Ministers. We see no difficulty in reconciling this with the Simon Commission's proposal as the discretion of the Viceroy to recommend suitable names will remain unimpaired. So far as the appointment of Indian Members is concerned, we are not aware of any instance in which the Viceroy's recommendation has not been accepted by the Secretary of State; and we do not apprehend a departure from this convention in future.

*Paragraph 71.*—We confess that we are at a loss to understand the meaning or implications of the opening remarks in the last



sentence of paragraph 71. If it is meant that the residuary powers in respect of the subjects transferred in the provincial field should be retained by Parliament we most emphatically disagree, as a provision of this nature may conceivably result in complete negation of 'responsibility and autonomy' proposed to be conferred in the provincial sphere. We, however, entirely agree with the concluding portion of that sentence.

*Paragraph 77.*—In addition to multiplication of training schools we should like to see an Indian Sandhurst established at the earliest possible date. We consider this to be a necessary corollary to the other proposals contained in this paragraph.

*Paragraph 78.*—In view of the considerations enumerated in paragraph 72 of the Memorandum we consider it desirable that the Punjab should be adequately represented in 'the Committee on Army Affairs'.

While agreeing generally with the observations in Chapter V of the Memorandum, we feel that a definite time limit must be fixed within which the process of Indianization should be completed and the control of the army handed over to a popular Minister of the Cabinet. We consider that 20 years would be a safe and adequate period for the purpose. If at the end of that period Indian officers of sufficient status and experience are not available to fill all the higher staff appointments, it should be possible to secure the services of British officers through the War Office till such time as suitable Indians can be found to replace them. We contemplate that even after the process of Indianization has been completed British officers will still be available to help and guide their Indian compeers. It will also be desirable to secure close connection between the British and Indian armies and this can be done by a periodical exchange of officers between the two armies. It will not be out of place to mention here that Japan successfully created and organised a highly efficient army within a short period; and we see no reason why India, which has the additional advantage of possessing a magnificent fighting force, should not be able to achieve the same result within the next twenty years.

*Paragraph 83.*—While we endorse the views contained in Chapter VI of the Memorandum we do not share the apprehensions of our official colleagues with regard to the imposition of terminal taxes. We consider the proposal of Sir W. T. Layton of great value as it will afford the provinces an opportunity of imposing indirect taxation, which is considered by the people to be less burdensome and is therefore comparatively less unpopular than the direct taxation.

*Paragraph 92.*—As regards borrowing, we feel that we cannot do better than commending the proposals contained in paragraph 130 of the Punjab Reforms Committee's report which we consider from every point of view suitable. We reproduce below this paragraph for convenience:—

“Another matter raised during the deliberations of the Joint Free Conference was the question of conceding to the provinces the right of raising loans on their own re-

sponsibility and credit without interference from the central government. While we consider it necessary that the central government should be invariably consulted in all cases where the provinces desire to raise loans, the former should not ordinarily stand in the way of the provinces making their own arrangements if it is to their advantage to do so. A convention should, however, be established which would allow the various provinces to meet together under the ægis of the Government of India to discuss questions of provincial credit, and the requirements of the various provinces from time to time in the way of loans, which they desire to float in this country, or elsewhere. We feel that the varying credit of the different provinces may adversely affect the position of provinces with a better and more stable financial credit if loans were always to be raised through the Government of India. Moreover, freedom of action in the matter of borrowing would encourage the provinces to consolidate and strengthen their financial position and resources. We are, however, of opinion that in case of external transactions and loans raised outside the country, the Government of India's sanction should be necessary in order to avoid internal complications, and any risk to the stability of currency, and the financial credit of the country as a whole."

*Paragraph 93.*—We consider that the dates fixed by the Lee Commission for reconsideration of proportions in the Indian Civil Service and the Indian Police Service should for the present be adhered to. [One of us, Malik Firoz Khan Noon, is of the opinion that provincial autonomy will be a sham if the security services, Police and I. C. S. (both Executive and Judicial Branches) continue to be recruited by the Secretary of State and remain under his control for all intents and purposes. Is it not a fact that there is not a single Dominion (Australia, Canada, South Africa) where security services are recruited by a Secretary responsible to the British Parliament. He considers that if the security services in Egypt are recruited by Egyptians, there is no reason why this right should be denied to Indians. He is further of opinion that even if the British element in these services cannot be immediately brought under the control of Provincial Governments there is no reason why the Indian element should not be forthwith placed under them.]

*Paragraph 94.*—We are not convinced of the necessity of retaining the Indian Service of Engineers as an all-India service. While we fully appreciate the importance of our irrigation system and its enormous value as a permanent asset, we do not see how the provincialisation of this service can affect the revenues of the province as suggested in this paragraph. The power to reduce or enhance the rates of *abiana* will under the new scheme rest entirely with the local Legislature; and it is therefore obvious that the classification of the officers of the Irrigation Department under one

or the other category can have no effect so far as the depletion or inflation of revenues from this source is concerned. On the other hand, we see grave disadvantages from the provincial point of view in allowing it to continue as an all-India service. So far as the interests of the present incumbents are concerned, these are already sufficiently safeguarded under the existing rules. As regards the future recruitment of British element, we propose to leave it to the Secretary of State to enlist the requisite number of officers on behalf of the local Government. This, we consider, will sufficiently ensure the continued efficiency of the Department in future (Malik Firoz Khan Noon is of the view that so far as this particular service is concerned there is no dearth of competent and highly qualified Indians who can be recruited in this country. He considers that if there is any service for which eminently suitable Indians are available in large numbers in the country it is the irrigation service. He feels that there is no need to reserve any post for Europeans in this service; but if the provinces wish to recruit a certain percentage of Europeans, which is very likely to be the case in the Punjab, for some time to come, then they should be allowed to recruit these officers themselves through the High Commissioner for India; and as far as the recruitment of the Indian element in the irrigation service is concerned, it should be immediately placed under the full control of provinces.)

*Paragraph 104.*—We are in full agreement with the observations made in this paragraph; but we consider that so far as the appointment of Judges of the High Court is concerned, the proposals put forward by the Punjab Reforms Committee in paragraph 135 of their report should be adopted. They suggest that "all Judges of the High Court whether permanent, additional or acting, should be appointed by the Crown on the recommendation of the local government. No. Judges of the High Court should be removable except by the Crown on the joint recommendation of the Governor and the local Legislature".

At present the Ministers, as distinct from Members of the Executive Council are not entitled to leave of any description during the tenure of their office. We consider this as anomalous and suggest that a provision should be made in the constitution to make it possible for the Governor to grant them leave on somewhat similar conditions and terms as now apply to the Members of the Executive Council. We think that they should be allowed one month for each year of service put in by them.

SIKANDAR HAYAT KHAN,

*Revenue Member.*

*The 11th August 1930.*

FIROZ KHAN NOON,

*Minister for Local Self-Government.*

*The 11th August 1930.*

PART II.—*Minute by the Hon'ble Sardar Sir Jogindar Singh, Kt., Minister for Agriculture in the Punjab Government.*

*General.*—The Government of India has been in a state of evolution from the day Britannia set herself to rule India. She passed under a constitutional Government with the transfer of administration from the Company to the Crown by the passing of the Act of 1850. In 1858 Queen Victoria of revered memory solemnly declared herself bound to her Indian subjects by the same obligations of duty as to all her other subjects. The seed of representative institutions was sown by the grandfather of our present Viceroy, with the passing of the Act of 1861 and quickened into life by the Act of 1909. Then came the War, and India fought the battles of the Empire in its far flung fields: and England promised her an equality of position in the British Commonwealth. Consequently India was admitted as an equal member of the League of Nations and the Government of India Act of 1919 was passed which His Royal Highness the Duke of Connaught declared as the first step towards Swaraj.

The Simon Commission was entrusted to examine the position with a view to redeem this solemn promise. The Commission spent two years in studying the situation; and before it had furnished its report, H. E. the Viceroy journeyed to England to plead India's cause: and on his return in 1929, speaking in the name of His Majesty's Government, defined Dominion Constitution as the goal of British policy. The Indian opinion from Gandhi downward rallied round the Viceroy, ready to co-operate in preparing a scheme which would invest India with the power of guiding her own destiny in future, as an equal partner in the British Empire.

The Viceroy did not receive the support he deserved and the position secured by Lord Irwin was lost.

Then came the Simon Commission Report. It studiously avoided any affirmation as to the objective of British policy and treated the announcement made by the Viceroy as a dead letter.

The scheme prepared by the Commission provides no bridge for the halting feet to walk on the road to realisation of nationality. It places the Executive so far as the Central Government is concerned, in a stronger position than now. The report pleads that a work of architecture has to find its foundation on solid earth forgetting that it needs human hands to build it, implying willing support and approval of those concerned. Sir John Simon's declaration that you cannot put a slogan into an Act was an unhappy confession from a man of his vision. No one knows better than him how potentialities of progress are stirred by a way cry. India expects Britannia to lead her to the promised land: any failure to meet this demand sounds as if England herself was losing faith in her mission; reluctant to realise the inevitable results of the forces set in motion by her. People are aware of the difficulties and dangers that beset the path to the pinnacle of power, but they are animated by high hopes that these can be overcome under proper guidance and leadership. The Commission missed a great opportunity by adhering to a narrow interpretation of its functions.

The all-India solution has found no favour and will have to be greatly modified, if it is to place India in a position to govern herself.

*The Punjab.*—Let me begin with my own Province. The Punjab stands between the North-West Frontier and the rest of India: it is inhabited by martial races. It has a large Muslim population which has been swept by Pan-Islamic idea more than once, along with other Muslim countries on the border-land, such as N.-W. F. P., Afghanistan, Persia and Turkey. The idea of reviving the glories of Islam is natural and never absent. In dealing with the Punjab, is it wise to ignore this aspect of the problem and its reaction on the rest of India? More than any other province the Punjab needs a legislature and a cabinet which provides a balance between the communities. The presence of the Sikh Community is a factor of some importance to the Province.

*Provincial Autonomy.*—The Commission has decided wisely to confer on the Provinces provincial autonomy under safeguards. The formation of a Cabinet with joint responsibility to the legislature is an ideal which has been the ambition of the Provinces to reach: but joint responsibility can only begin in joint electorates. The Commission has suggested no advance and official Members in their note have accepted a position which I must confess is not tenable. It gives fresh life to communal groups and rather than help the growth of self-Government will undermine its foundations. Joint responsibility demands joint electorates and if the minorities in the Province are not asking for any protection, in the way of separate Electorate, is it reasonable to give additional protection to the majority community? If the elections are to be on the basis of communities the formation of a Cabinet must depend on communal groups.

*British Representation.*—I do not see why the British should have no representative in the cabinet. The presence of a Britisher in the cabinet may provide a balancing influence and may help the Ministers selected from communal groups to so act as to serve all. I am aware of the criticism that an official Minister in the Cabinet is not consistent with principles of democracy; this is not altogether true as long as British forces and British officials are required, and as long as British stake in the country is as great as now, it is but fair to recognise the need of British representation in the Cabinet in the same way and on the same grounds as is claimed by other minority communities. If the appointment of an unelected Minister seems illogical there is nothing to prevent an official seeking election from a Special British constituency after resigning his appointment in the Civil Service. I feel that when I claim that the Statute should provide for the presence of a Sikh in the Provincial Cabinet on the strength of my community's importance and stake in the country, I cannot consistently refuse British representation in the Cabinet; the British community is no less important than any other minority community in India. To my mind it would secure greater harmony if a Britisher finds a seat in the Cabinet itself and is responsible for the decisions that are arrived at, rather than the arrangement which the official

members propose; the appointment of a Principal Cabinet Secretary who can criticise, without sharing the responsibility of decisions. He will be like a British Resident in an Indian State, an interested critic,—without responsibility,—reporting to the Governor. If there is to be no British Minister in the Cabinet the Punjab cabinet should consist of half Muslims and the other half non-Muslims. The Sikh position is that as long as communal representation remains there should be statutory provision for the inclusion of Sikhs in the Ministry and the Sikh or Sikhs who are selected for appointment should enjoy the confidence of the majority of the Sikh Members of the Council.

*Appointment of a Chief Minister.*—The question whether there should be a Chief Minister is full of difficulties. If Cabinet is to function, it must have a Chief Minister, but it would make good Government in the Punjab altogether unworkable, if the Chief Minister comes from the majority group and selects his Hindu and Sikh colleagues, who promise to be subservient to his community. Indeed, the prize of Chief Ministership should be reserved as the reward of forming a non-communal party dependent on the confidence of all communities. In the earlier stages it would be wise if the Governor selects Ministers from the communal groups and appoints them, till the Council itself reaches a stage when it can disregard communal considerations. The Governor could ascertain before he makes final appointments if the persons he wishes to select are ready to work together and accept joint responsibility and allow the Minister selected to choose a Chief Minister from among themselves to retain his position as long as he enjoys the confidence of his colleagues.

*Reserve powers.*—I have no objection to the Governor having powers as defined in paragraph 49 of Simon Commission Report. Indeed, it is my hope that Cabinets and Legislative Councils will work in such a way that the Governor will be rarely called upon to use his reserve powers, which will fall out of use as the powers of the Crown have fallen into disuse in other parts of the Empire.

*Mechanism of advance.*—The Commission is right in recommending that the new constitution must carry the mechanism of advance and that Legislatures should have the power of modifying the constitution, thus conferring elasticity and enabling adjustments to be made according to the demand of new times.

*Redistribution of Boundaries.*—There is a good deal to be said in arranging provinces in such a way as to assure harmonious working and if communal problems present difficulties which cannot be overcome by mutual goodwill, then the only possible course is the redistribution of the provinces in such a way as to minimise communal difficulties. The scheme of representation outlined by official members for the Punjab will place the Muslim community in permanent majority. I am aware of no historical parallel, or theoretical principle for placing a community in permanent majority in the name of democracy and if no other solution can be reached, redistribution of boundaries may provide the only fair and just solution.

Dera Ghazi Khan in any case is really outside the range of the Punjab also Isa Khail Tehsil of Mianwali District. The boundaries of the Punjab may well remain this side of Indus. Dera Ghazi Khan as the official members point out must be a charge on Central revenues and find its proper place in the N.-W. F. Province or Baluchistan.

*Size of Provincial Councils.*—I think it would be a mistake to make the size of the Council too large or to lower the franchise too much. Having provided the mechanism of advance the movement in the direction of increasing or decreasing the number of members, lowering or raising the franchise should be left to the Council itself. Now if we take the present Council it has:—

34 Mohamadans.

23 Hindus.

13 Sikhs.

The Council is safe from acting in a communal manner by the presence of an official *bloc* numbering 16 and 6 nominated members the official *bloc* therefore represents about 17 per cent. of the Council. In the new constitution the official members disagreeing with the Commission's recommendations propose:—

The total composition of a house is as follows:—

Muslims	.	.	.	.	.	.	.	.	.	66
Hindus	.	.	.	.	.	.	.	.	.	40
Sikhs	.	.	.	.	.	.	.	.	.	24
Europeans	.	.	.	.	.	.	.	.	.	2
Labour	.	.	.	.	.	.	.	.	.	1
Christian	.	.	.	.	.	.	.	.	.	1
										<hr/>
Total	.									134
										<hr/>

The labour seat may as well be accounted for as a Muslim seat thus securing 67 solid seats to the Muslim community, and the balance scattered amongst the other. Does any one imagine that a fixed majority of 67 could ever be moved, or allow the growth of a party system or National Government? The argument that in other provinces there will be Hindu majority does not strengthen the case. In other provinces Muslim minority have been given weightage almost to doubling their representation—a substantial concession—but in the Punjab we are expected to accept a false-creed that a majority community should get preference on the basis of population, while representation is based on property franchise. So far as I am aware this doctrine has formed no part of democracy anywhere, but some phrases acquire a fatal fascination and refuse to be dislodged.

It is difficult to follow the reasoning which has led to this decision. Ordinarily, protection is extended to minorities, but in the Punjab it is the majority that is to be safely established in permanent power in the name of popular Government. It must be remembered that British Government has succeeded by its non-

communal character. A communal majority should be in a position of dependence; so that it may seek reconciliation and understanding with other communities and endeavour to give satisfaction. Our aim is to promote the growth of nationality and self-Government and we must not knowingly introduce elements which are likely to exert a disruptive force. I am, therefore, strongly opposed to the recognition of the principle that a majority community should be in permanent majority, as long as representation is by separate communal electorates and based on property and other special qualifications. It must be admitted that provincial autonomy is only possible under safeguards, which can secure a Government not by one community but by all the communities for all the people of the Punjab. The idea that reserve powers vested in the Governor and the Government of India will prevent any break down will be found in practice an exploded myth. No Governor could be in permanent opposition to his legislature. The safeguards must therefore be in the Council itself and provide for the merging of the communities. This can be done by the allotment of seats not on the population basis but on the voting strength and so long as adult franchise is not introduced it is illogical to bring into play the principle of population. The importance of a majority community can only be judged by its services, by its usefulness, and by its stake in the country. So far as population of peasants (*Jats*) is concerned, the Muslim population is no larger than the combined Hindu and Sikh population. Indeed, in this world of ours it is minorities that have dominated nations, and though the ideals of pure democracy demand a new orientation, the biological factor still confers power on those whom God has dowered with the gift of ruling.

In the days of Cromwell the question was raised. Ireton defined the principle that voting should be based on property and confined to those who have a permanent stake in the country. Colonel Rainboro in his passionate vision swept aside the requirements of expediency and experience, and said, "I think the poorest and that is in England hath a life to live as the richest he." It has taken England all these years to introduce adult franchise, while we are ready immediately to sacrifice vested interests. Take the Punjab: the eight colony districts pay 221 lakhs in land revenue and 281 lakhs in water rates as compared with 234 lakhs in revenue and 281 lakhs in water rate by the remaining 21 districts of the districts. If we were to separate the Central districts the contribution of the Muslim districts will sink into insignificance and yet it is the population of these districts which gives Muslims their majority. Is it reasonable to expect the Central districts to accept this arrangement, which would place them in such an invidious position? The position is clearly illustrated by the present constituencies. The number of voters for one member of each community are as follows:—

9,500 votes to one Muslim member.

12,055 votes to one Hindu member.

14,300 votes to one Sikh member.



Under the new proposals this will alter as follows:—

7,320 votes to a Muslim member.

10,314 votes to a Hindu member.

11,143 votes to a Sikh member.

Is this right, equitable or expedient that an important minority like the Sikhs should get a member for 11,143 votes to the 7,320 votes required for a Muslim? Is it reasonable to expect the Sikh community to accept such an arrangement? Everywhere it is minorities that are given protection, here minorities are to be penalised and refused their share which their voting strength gives. Can population be the governing factor as long as property franchise remains? I must clearly say that my community will never accept this arrangement.

To summarise, we should not forget the end in view which is the growth of common citizenship, the establishment of self-governing institution, development of a sense of mutual helpfulness and responsibility, and maintenance of those conditions of peace and security which are essential for the social, moral and material development of the province. The conclusions reached by the Simon Commission in paragraph 85 are based on full understanding of the Muslim claims and must prevail. I can assert without any hesitation that the proposed arrangement is not acceptable to two powerful communities and that they are not prepared to surrender on this point.

*Electorates.*—In the matter of electorates the Sikh community has much to lose by advocating joint electorates: but we recognise that to promote national ends we must sacrifice communal ends. The village people have never asked for separate electorates. Mr. Darling bears witness to the happy relations existing in the villages in his last book. It would be tragic if, when the constituencies are enlarged, we introduce a new line of cleavage in the villages and disturb the co-operative spirit which makes for union. There is no reason why all the rural constituencies should not have joint electorates as well as special constituencies. Separate electorates should be confined to urban areas and at the most extend to the present constituencies. The Commission has suggested the forming of primaries so that the candidates acceptable to any community may be elected, this to my mind meets all the objections. We must recognise the danger of communities consolidating on a communal basis, and if minority communities do not want them, is it reasonable to keep them in the interest of a majority community?

*Landholders constituency.*—The Commission recommends the abolition of constituencies for landholders under a misapprehension. The idea that landholders can secure their seats through ordinary channels and that there should be no special provision for them is based on wrong premises. The number of large landholders in the Punjab is very small, and consequently powers is likely to pass on to the tenants and the small peasants. The landholders and commercial classes as captains of industry have

always served as rocks to break the onslaught of disruptive and disorderly forces. I agree with all that the Official Members say regarding the retention of these constituencies. The special representation of the landholders is of paramount importance to protect vested interests and to serve as bulwarks of good Government. Of course it is not possible to agree to the proposed allotment by communities. There does not seem any reason why nine Tumandars should be given a member. Landlords are men of education and influence, and relations between Muslim, Sikh and Hindu landholders are cordial. I propose that they should form common constituencies and elect their representatives without any regard for religion. It is only in this way that we can promote common citizenship.

*The Sikhs.*—The position of the Sikhs has failed to win recognition from the Official Members. What is the good of Government expressing its sympathy and recognising the important services of the Sikh community in the past and yet neglecting the claims of the community. A Muslim is to get a seat on 7,000 voters while a Sikh is to get one seat for 11,000 voters. How can such a proposal satisfy the Sikhs? It is not only on communal grounds that I urge the claims of the Sikh community but also on the ground of public utility. When official *bloc* disappears, with it will disappear the stable and balancing influence which has made for the smooth working of the Reforms. The Punjab is, however, fortunate in having Sikh community which can serve in holding the scales even, and prevent one community from dominating the other. Indeed, the Sikh community provides an element of strength which it would be unwise to dissipate. Let the Sikhs have their just dues, that is representation on their voting strength as long as property franchise, remains in force. The Simon Commission very pertinently pointed out that the Muhammadan community, was getting weightage both in the Assembly and in other Provinces, where it is in a minority, on the ground of its importance. Is it fair, to penalise the Sikhs? I must confess in the Punjab the problem of minorities ends with protecting the majority, unalterable by any appeals to electorate.

*Votes for Women.*—Regarding votes for women, so far as my community is concerned we are ready to welcome the franchise but I am not sure if the time has arrived for such a large extension of the vote. I think a proposal of this kind should come from the Council itself.

*All-India Solution.*—The All-India solution on which the Commission lay great deal of stress can only be proved by the touchstone of time. The need of the moment is that the Central Government should have the power to maintain unity in India, and, to exert the influence in helping backward areas to come up to the level of advanced provinces. The Central Government must be truly national in character and provide the model for the provinces to follow. It must be strong enough to preserve present standards of administration, securing even handed justice for all, helping in broadening the basis of civic life. The Federal Assembly must, therefore, be so elected as to secure this high purpose; and I feel

that in early stages it would be unwise to make it dependent on provinces, or allow provincial views to dominate. The idea that provinces are sovereign States is a myth, with no foundations in fact. The Government of India Act, itself bears ample evidence and the report of the Simon Commission is no exception. Therefore in truth it is Government of India which will delegate power to provinces, rather than province surrender power to Government of India. Indeed, as long as Government of India is even partially responsible to Parliament: there can be no question of its dependence on provinces. When provinces are fully established in self-Government it will be time for the Assembly to be truly federal in character. The Official Members have argued at great length on the position of the provinces in the Federal Assembly. They apprehend that Central Legislature may impose its will against local feelings and may claim independence and over-riding authority, but the arguments advanced by them in connection with transfer of responsibility in the Centre, run counter to these arguments, for they plead that, to permit provinces to grow in the transitional period, the Central Government must possess both stability and strength. I ask for nothing else, and as the provincial Governments will be in various stages of growth, all residuary powers must therefore remain with the Central Government.

*The Centre.*—I am not concerned whether the Central Assembly is called the Federal Assembly or an Indian Parliament as long as Central Government is in a position to control and guide the provinces. It is essential that the unity of India should be preserved, a unity that has been achieved after long years, and a unity that is the source of its present strength. The federation in whatever form it takes shape must not allow this sub-continent to fall into small States without cohesion and without strength, powerless to define its frontiers, as happen in the days of yore. For many years to come, it seems to me, provinces will need a vitalising Centre to help them.

*Elections.*—In the present state of India I am attracted by a system of indirect elections but on closer examination I find that nowhere in the world federal assemblies are drawn from popular houses. It may be desirable to create primaries electing to an electoral college of which the Legislative Council may form a part, but I cannot agree that federated assembly should be primarily drawn from the provincial councils. The objection to elections from provincial councils appears to me to be:—

- (i) It will rob the provincial councils of the best men and leave the province poorer.
- (ii) This will prove a source of weakness both to the provinces and the Central Government. Indirect elections will narrow the field of election.

What we need in the Assembly are men of broad views, the best that the country can give, so that the Central Government may receive requisite strength and support.

In the Federal Assembly and the Council of State the number of Sikh seats should be specially provided.

*Council of State.*—I am in favour of retaining the Council of State. I would reserve 1/3rd seats for retired Ministers, hereditary magnates, and merchant-princes, whom the Government should have the power of nominating for life.

*The Viceroy's Cabinet.*—The Commission recommends that the Viceroy should retain his Executive Council without any transfer of responsibility to legislature. The experience of last ten years bears ample evidence, that unless there are direct relations between the Executive and the Legislature, deadlocks are inevitable. The Commission seems to be aware that this arrangement is not likely to be satisfactory, and aims at securing members of the Assembly as members of Viceregal Cabinet by giving the Viceroy the discretion to appoint them. I cannot see, if Indian members are to be drawn from Central Legislatures, what serious results are apprehended if they became responsible to central legislature. If the change is not likely to weaken the stability of Central Government on which the Official Members lay such an emphasis, there is no reason why responsibility should not be transferred to legislature.

The proposals to retain Viceroy's Cabinet in its present form, are not based on any clear appraisalment of advantages and disadvantages, otherwise, it is abundantly clear that it is impossible to work an Executive divorced from Legislature in responsibility. There are no grounds to fear that transfer of responsibility at the Centre will be more disastrous than it has proved in the provinces. The Official Members hold that during the transition period the scheme proposed by the Simon Commission should be followed. I am afraid that the delay in introducing responsibility at the centre will only delay settlement. I have nowhere seen it stated that the risks to which the Central Government will be exposed, by transfer of Departments, holding portfolios which are administered in the provinces by Ministers responsible to Provincial Councils. The leader of the House as proposed by the Simon Commission should be appointed from amongst the members of the legislature and there should be some instructions regarding the claims of Sikhs in Viceregal Cabinet. The Viceroy should have the authority of selecting a fixed number of British Ministers to Foreign and Political and any other portfolios which he considers desirable who should hold seats in the Legislature.

*Indian States.*—The position of Indian States in a self-governing India seems difficult only, if the Indian Princes still cherish the idea that they can partake in all the advantages which the constitutional Government secures for British India and yet they remain irresponsible rulers in their own States. They will have to come to a decision, but till this decision is reached, the Indian States can remain as now in relation to the Crown through the Viceroy. If however, they wish to take any share in the federation and financial advantages that are likely to flow from it, they will have to maintain the required standards of administration. The claim for financial adjustments must depend on the States joining the federation. I agree with the Official Members that the day is distant, for such a federation, but when it comes, there does not

seem any reason why the Ministers representing the States should not find admittance to the Council of State. There are States and States. The smaller States should form part of the provinces to which they belong and the larger States can come into the Indian federation. The States might make a start at least in one direction. Most of the States have introduced laws modelled on Indian Civil and Criminal legislation. They might now go a step forward and entrust the administration of the laws to a supreme central Delhi.

*Finance.*—The financial proposals outlined by Sir William Layton, are on sound lines and the creation of a provincial fund and collection of revenue by the central authority for provinces will provide an additional source of strength. I am in agreement with what the Official Members say on the financial proposals of the Commission. Regarding definite recommendations, there is no reason to take fright as they will have to be accepted by properly constituted representative Councils.

*All-India Services.*—The advantages of all-India Services are, to secure men of character and ability, who are free from communal bias. The recruitment of all-India Services, therefore, should be entirely through competition and the standard which has been set by British traditions should be strictly maintained. I am in agreement with what H. E. the Governor says regarding following the Lee Commission recommendations till 1949, when the matter can come for reconsideration again.

The present system of nominating members from minorities to all-India Services who are not qualified and cannot get through the competition should be dropped. To provide room for minorities the only possible way seems, to me, is to make a selection from officers who have been tried, and who have proved themselves worthy to be admitted to the Imperial Service by their character, ability and freedom from communal leanings.

*High Court.*—I entirely agree with the recommendation of the Commission that the High Courts should be under the Central Government, so that the Judiciary may be entirely independent of any political parties that may be formed in the Province on lines other than national. In spite of what the Official Members say, I think all High Courts should be transferred to the Government of India as the Simon Commission recommends.

*The Army.*—Complete severance of control of the Army from the legislature turns constitutional advance into a mockery. I agree that His Excellency the Commander-in-Chief should remain outside the legislature. I recognise that British troops lent to India might remain outside the control of legislature and may form a charge on the Imperial and Indian Revenue. There can, however, be no question that Indian Army should be under the control of the Legislature, and as in the early days, a limited number of British officers can be lent to maintain its efficiency. It would not be difficult to provide for the continuation of a common general staff, supplies and services which can form a charge on a non-votable consolidated Army fund which can be created. The Committee

on Army affairs can bring the representative of the Legislature and the Army together to serve as a council of Indian defence.

I am confident that the arrangement I propose will secure the position of the British army on the one hand and satisfy Indian opinion on the other. I can see no other solution which could fulfil these conditions.

In conclusion, I need only recall the objective of British policy, which is to raise India into a self-governing Dominion and there seems no other alternative, if peace and progress are to be secured, but to confer Dominion constitution under proper safeguards. There is wonderful work awaiting for us all, if we co-operate in making India self-governing. Failure to reach an understanding is not without its dangers; the former promises peace and prosperity, the latter an endless struggle. The refusal to accede to this demand can only result in poisoning the sources of good will and creation of difficulties, which must ultimately drive the two countries apart.

A great victory awaits Britannia if it would co-operate in securing a larger life for India, with the main object of protecting not this or that institution, this or that class or creed, but the whole people, their laws and their liberties, regardless of petty expedients, however attractive at the moment, which must eventually fail, for in this God's universe, truth and justice must eventually prevail.

JOGINDRA SINGH.

*Minister for Agriculture.*

11th August 1930.

---

PART III.—*Minute containing the opinion of the Hon'ble Mr. Manohar Lal, Minister for Education.*

## INTRODUCTORY.

(SIMON COMMISSION REPORT, PART I.)

*Chapter I of the Official Memorandum.*—It is undoubted that any constitutional system propounded for India must be judged as a whole, but it is also necessary to remember that the test which is applied to any proposals is whether they satisfy the insistent demand of political India for rapid steps towards the introduction of full responsible Government or to use the more common short expression envisage the early realization of Dominion Status for this country. This is recognized by all political India as an undoubted and necessary implication in the Preamble of the Government of India Act, 1919. In attempting an All-India solution of India's constitutional problem the Commission proposes two basic ideas, (i) that the future constitution of India is to be on federal lines, and (ii) whatever constitution is now introduced it will so incorporate in it the principle of flexibility that future changes and progress will be secured by the healthy method of growth rather than artificial statutory jumps.

2. The principle of Federation for the Indian constitution has been widely questioned. In my Minute dated the 22nd of August 1928 (Memorandum prepared for the use of the Indian Statutory Commission, Volume II) in speaking of Provincial Autonomy, I said, "But in attaining the idea of responsible government within the provinces, use is constantly made of expressions such as 'autonomy', 'constituent governments in a federated union' that have implications other than legal which deserve consideration. The ideal of provincial autonomy has attractions, it is undoubtedly true that in any properly limited provincial field the knowledge and interest available within the province must work for efficiency of administration and if sectional forces were not at work lead to increased general welfare, but it will be a sad situation if as a consequence the already numerous schismatic tendencies in Indian life were to acquire an accession of strength by reducing the provinces into separate sealed units, and the growing national sentiment of comparatively recent origin should thereby suffer any check. In devising the provincial spheres of government, this fundamental consideration that bonds of nationhood should not weaken must be constantly borne in view as the most essential test. The provinces are creatures of executive fiat for administrative reasons, and in trying to attain self-government through these somewhat artificial units our supreme loyalty to India as a whole must not in any form or degree be strained or violated. India does not represent a composite state based on a union of distinct political entities, there is no federation here formed of a union of component sovereign states as in the United States of America. Nor does the pursuit of such a federal ideal by deliberately clothing provincial governments with any marks of sovereignty lead to the realization of what the politically conscious India desire." I still adhere to this view. It is admitted everywhere that considerable decentralization by the Central Government is necessary for efficiency of administration, but this is not inconsistent with the idea of having a Unitary Government. It has, however, to be borne in mind that where a number of provinces with considerable powers exist there must be some method by which their separate administrations are brought into relation, but this is, I take it, not all that is meant by Federation. The Report throws no particular light on it, but it is clear that in the past a strong Central Government with large immediate contacts with the provinces has been a factor of the utmost importance in this country where disruptive forces are always asserting themselves and where separatist tendencies in the shape of race, religion and language need careful checking. One concrete contribution of the Commission towards the realization of the idea of federation is that the lower House in the Central Legislature, called the Federal Assembly, should be indirectly elected by the Provincial Legislatures. In the Official Memorandum this is described as a further step in the direction of confederation. To a student of constitutional history this comes as a shock. Nowhere in any of the constitutions of Federal Governments is there a single instance of a House corresponding to the Federal Assembly, that is the popular chamber of the Union, being elected indirectly

by the legislatures of the Units of the Federal group. The wisdom of constitution makers hitherto has never thought fit to make the federal popular chamber based otherwise than on the suffrage of the whole country. Federation has depended upon other factors. It has been based on the distribution of powers and functions of sovereignty between the Union Government and the members of Confederation so as not to be subject to alteration except with the agreement of both parties, the constituent states possessed of autonomous powers or sovereignty merging their existence into a Union, part with certain powers and a definite legal position arises, and future changes depend upon the terms of the constitution. Nowhere is the idea of indirect election, even remotely, considered as having anything to do with the idea of a Federation. It is not, as the Official Memorandum would have it, the political tinge from Provincial legislatures derived from indirect election that furnishes any step much less a basic idea in the constitution of Federal Governments. This is new wisdom devised for India, and would require strong justification in face of the paramount considerations such as those to which I have referred above, namely:—

- (i) the imperious need of checking separatist tendencies;
- (ii) the historic necessity established in the course of ages of a firm Central Government with large powers, not merely in the interest of peace and safety, of control and superintendence over the provinces; and
- (iii) thirdly, and this political India values particularly, of the need, nay of the sacred duty, of watching that the growing national sentiment of comparative recent origin in this country suffers no shock or change.

3. I cannot help feeling that the result of the unprecedented step suggested by the Commission in the supposed interests of Federation can only be to affect injuriously Indian national sentiment, and tend to impair the unity of the country in the long run. It will also seriously impair the efficiency of the Central Legislature, in so far as it will be inspired by the narrow parochial views prevailing in the provinces and no longer view broad questions touching the whole of the country such as defence, and the trade and industry of the land from that all-India point of view so essential for their proper solution.

4. The other basic idea, the principle of flexibility on which so much stress has been laid by the Commission, is of wide validity, but the Commission has confined it within the narrowest possible limits. In paragraph 95 of their Report the Commission says that it would be open to a legislature to effect certain constitutional amendments of matters of “(a) changes in the number, distribution or boundaries of constituencies, or in the number of members returned by them, (b) changes in the franchise or in the method of election, or (c) changes in the method of representation of particular communities”, under certain very limited conditions. Now the well-recognized meaning of provincial autonomy, an ideal the realization of which political India almost unanimously at



the earliest possible stage, among other things, is complete responsibility of the executive to the Provincial Legislature. This involves as a necessary consequence that the Governor should occupy the position of what is known as a constitutional Governor. The proper principle of flexibility, even in the Provincial field, to which, in this connection the report particularly refers, should provide within the constitution the possibility of this position arising. Of this I see no indication in the report, and, now that the machinery of occasional or periodic parliamentary enquiry is to be abandoned, it is difficult to see how, in this essential regard, the position can be changed. A doubt is therefore expressed, and not unnaturally, by some that the so-called principle of flexibility can only have the effect of deferring effective provincial autonomy. Subject to these reflections I entirely endorse the virtue and desirability of having an elastic constitution.

## II.—PROVINCIAL REDISTRIBUTION.

(SIMON COMMISSION REPORT, PARAGRAPHS 27 AND 38.)

5. I generally support the views expressed in the Official Memorandum in paragraphs 10 to 14. It is a mistake to raise the question of provincial redistribution at the time of the revision of the constitution. I am not in a position to speak even with regard to the areas for which the Official Memorandum suggests the possible need of early solution, but it appears to me that if enquiries into the question of the separation of Sind are to be instituted the introduction of the new constitution into the Bombay Presidency may have to be deferred, and large and involved questions of finance with possible reactions on the whole of India will have to be faced, apart from the extreme undesirability of creating a province by executive fiat where the result is certainly to be the enthronement into power of a communal party. Government's action in this regard is certain to be misunderstood and bound to lead to local and probably wider agitation. On the whole, therefore, it would seem to be wise to defer this question for the time.

## III.—THE GOVERNORS' PROVINCES.

### *The Provincial Executive.*

SIMON REPORT, PART II, CHAPTER I, PARAGRAPH 46. PARAGRAPHS 15 *et seq.* OF THE OFFICIAL MEMORANDUM.

6. I agree with the Report and the Official Memorandum as regards the general character and position of the Ministry, that is,

- (i) unitary government responsible to the legislature for the whole provincial field should be established;
- (ii) the principle of joint responsibility of the Cabinet should be enforced;
- (iii) as a necessary corollary of (ii) it should be constitutionally established that the only vote of censure which could

be proposed would be one against the Ministry as a whole carried after due notice; and

- (iv) the provision as regards Ministerial salaries should be made by a Provincial Statute, and not be liable to be reduced or denied by a vote in supply.

7. I think the appointment of Under Secretaries as suggested in the Official Memorandum would be a step in the right direction.

8. As regards the inclusion of an official member in the Ministry I agree with the Official Memorandum that, in this Province at any rate, no such member should be included in the Ministry. The inclusion of such a member would introduce a grave anomaly in an otherwise responsible Cabinet. It would not make for reality so far as joint responsibility of the Cabinet is concerned and it will generally be a source of weakness.

The introduction of an official member in the Ministry is so radically inconsistent with the idea of a Cabinet truly responsible to the legislature that I do not favour such an arrangement in any province, and I do not feel pressed by the consideration that in Presidencies where Governors are directly appointed from England and possess no previous experience of the details of Indian administration and conditions the need for an experienced technical Indian administrator in the Cabinet can override the fundamental principle of true Cabinet responsibility.

In paragraph 16 of the Official Memorandum it is proposed that in view of the fact that—

- (i) no official member with technical administrative experience will exist in the Cabinet, and
- (ii) the Governor himself will not always be present at the meetings of the Cabinet, a Secretary with certain powers should be appointed. He is described as a Cabinet Secretary with enlarged functions to be called the Principal and Cabinet Secretary. It is difficult to speak with certainty, but it appears that a Secretary clothed with the status here intended and possessed of powers with reference to other departments here contemplated and entitled to address the Cabinet even though without a vote may tend to impair the real authority of the Ministry, particularly if we remember that he is certain to be a very senior member of the Indian Civil Service with possibly near prospects of preferment to a Governorship. If this result should follow it would be an unfortunate consequence. I am not aware that a Secretary of such status and power is associated with responsible Cabinets anywhere else in the world and the particular need for one in the circumstances of India is not clearly made out to my mind.

9. A circumstance that I should like to mention as of some importance is this, that in provinces where it is customary to appoint to Governors' office senior members of the Indian Civil

Service, who now usually occupy the office of official member of the Executive Council, the disappearance of the official member will undoubtedly cause a difficulty. If a senior member of the Service were raised to Governorship without having been a colleague in the Government of the Ministers and who has been technically subordinate to the Ministers until the eve of his appointment it would obviously constitute an awkward position.

10. I agree that the power be reserved to the Governor to appoint a non-official as a Minister who is not an elected member of the legislature in the circumstances set forth in paragraph 16 of the Official Memorandum.

11. I am in general agreement with paragraph 17 of the Official Memorandum as regards the selection of the Cabinet. The appointment of a Chief Minister should be a matter discretionary with the Governor depending upon the circumstances of each Province. It is easy to see what the Simon Commission Report says at the end of paragraph 55 that "in some circumstances the formation of a Ministry from different communities might present less difficulties if there was no Chief Minister and no recognized leadership of the Ministry". It is clear that in the Punjab no Ministry would be just or proper or desirable which did not include members from the three leading communities of the Province, even though if official recommendations regarding communal proportions in the Council are adopted, a solely Muslim ministry can carry on particularly if a few non-Muhammadans and Sikhs can be detached from their normal grouping, as is not unlikely in view of past experience.

12. A reference is made in paragraph 17 of the Official Memorandum to the need of including members from the three leading communities into the Cabinet because the present parties are constituted on a communal basis. It follows as a necessary corollary in view of the fact that in the past a few Hindus have found themselves ranged in the Muslim group that no representation in the Cabinet of Hindus, a most important minority in the Punjab, will be acceptable to that community unless the selection were made from the Hindu group proper.

13. I am in general agreement with the Official Memorandum in paragraph 18 as regards the Governor's presence at Cabinet meetings and the right of a Minister to record a minute of dissent.

14. *Paragraphs 19, 20 and 21 of the Official Memorandum and paragraph 50 read with paragraph 182 of the Simon Commission Report.*—It is obvious that where safeguards are necessary they can be enforced only through the Governor and also in case of a breakdown power must vest in the Governor to carry on administration, and I find myself in general agreement with the view expressed in paragraph 20 of the Official Memorandum. There is great force in clothing the Governor with special powers where the financial stability of the Province may be in danger.

But it must not be forgotten that the real demand of the people is that the transference of the present reserved subjects to the Ministers should not form any occasion for increase, however

indirectly, in the power of the executive as represented by the Governor, and that not merely with regard to subjects now transferred but also as regards those which are to be hereafter transferred, such as Law and Order, in other words general powers should be on the same footing with regard to all subjects. Political India's demand is for a constitutional Governor. In the Simon Commission Report, as I have already remarked, though so much stress is laid on the principle of growth within the constitution, no provision is made for any approach towards this position.

### B.—*The Provincial Legislature.*

15. *Paragraph 23 of the Official Memorandum. Size of Provincial Councils.*—The recommendation of the Simon Commission that the Provincial Councils should be as large as between 200 and 250 is not suitable to the conditions of this Province. I do not propose to define the exact numbers, but I should like to point out that though the elected strength of the present Council is only 71 members, we have a fair proportion of members who would not normally find a place in a legislature representing over 20 millions of people. The official proposal is to raise the total to 134 and this without the official *bloc* and nearly all elected. In paragraph 44 of the Official Memorandum in dealing with the question of a second chamber it is said that "a Legislative Council expanded even to the moderate dimensions we have proposed will absorb for some time to come all that we can reasonably expect to secure in the way of persons fitted for the exercise of legislative functions". I regard this as an unduly optimistic interpretation of existing facts not borne out by the recent or past history of our Chamber. The more correct position is that stated in paragraph 23 of the Official Memorandum where it is said, "We see no useful purpose which would be served by making the Council larger and on the contrary think that such an increase of size might result in deterioration in the quality of members returned. In the Punjab with few large industries and with the bulk of the land held by small peasant proprietors the number of men of a responsible character who have leisure to devote time to work on a legislature is few". In view of this I have no hesitation in saying that we ought in no case to go beyond 134 members and should really try to keep a more compact House particularly as it would be possible for the house itself to expand by its own resolution later on if found desirable.

16. The opinion of the Simon Commission to maintain separate communal representation is the saddest part of the report from the point of view of a nationalist. It brings despair to those who had looked forward to an outside body to resolve the unhappy obstacle that must bar India making any progress on the path of democracy and real parliamentary Government. I expressed my views on this subject at some length in paragraphs 7, 14, 15, 16 and 19 of the Minutes of the Unofficial Members submitted to the Indian Statutory Commission. It is clear from the Official Memorandum submitted to the Simon Commission, paragraphs 7 and 17, "that the predominant lines of cleavage are still communal though an effort has been made to give it a political tinge. The electorate at

the moment thinks and acts communally; until the communal factor ceases to be paramount the most stable parties will be fundamentally communal. The result is that the parliamentary system under which one party gives place to another on account of a change of allegiance on the part of a portion of the electors or their representatives will have in the near future no counterpart in the Punjab", and further the authors of the Official Memorandum to the Statutory Commission recognized that this position is "to some extent stereotyped by the fixation of the proportion of seats on a communal basis". As I then said "the present system enshrines a non-political principle in the bosom of the constitution itself". It was, therefore, not to be wondered at that the makings of parliamentary Government did not exist in India and genuine party system based on policy rather than class divisions, factions and interests could not grow. If the recommendations of the Commission on the question of separate representation of communities is to be given effect to anti-political class and communal divisions will be *permanently stereotyped* for it is not to be expected that later amendments by constitutional resolutions contemplated in paragraph 95 of the Report will lead to any escape from this vicious and undemocratic principle, particularly as there is no reason to imagine that communities favoured under the arrangements now to be made would wish to renounce their positions of advantage. Some have thought, and with much justice, that one of the main tasks that lay upon a Commission that came to study problems and devise schemes of real responsibility and democratic Government was boldly to find a way out of the present communal morass, and their failure to prescribe for India's ills in this regard is failure in the fundamental task of conceiving a proper polity for India.

17. On the details of the official views on communal representation, I regret that I have large differences to record. On the general question of communal representation, particularly the number of Muhammadan seats, the Commission has taken the short course of adopting the Lucknow Pact which was entered into some 13 or 14 years ago with reference to the conditions then prevailing and have recommended in paragraph 85 that while in 6 out of the 8 provinces the present scale of weightage in favour of Muhammadans might properly be retained in the Punjab in regard to *general* constituencies the present position should continue, that is, Muhammadan seats should be equal to the seats given to Hindus and Sikhs. The Commission "is not prepared to go so far as to give Muhammadans a fixed and unalterable majority in the general constituency seats in the Punjab". Our Official Memorandum, however, considers this illogical and would give the Muhammadans a clear majority over the other two major communities both in the general constituencies and in the total composition of the Legislative Council.

18. In paragraph 31, which deals with general constituencies, the authors of the Official Memorandum propose to increase the Muslim seats from 32 to 63,

Hindus from 20 to 36,

and Sikhs from 12 to 23,

resulting in a total of 63 for Muslims as against 59 for the other two communities. In the total composition of the House they would give 66 to Muslims and 64 to the other two communities even if we accept the official view as regards the communities to which certain special seats will fall. This official allocation of seats I cannot endorse. It is difficult to see why in practically doubling the seats in the general constituencies the Hindu position should be worse than it is to-day, and similarly why an important community like the Hindus should have less than its proportion in the population. In the total composition of the House the Hindus out of 134 seats according to their population ratio of more than 31½ per cent. (and not 31 per cent. as the Official Memorandum speaks of them in paragraph 30, *vide* paragraph 85 of the Simon Commission Report, Volume I, where exact numbers are given) would be entitled to a little over 42 seats, and yet the official recommendation is for 40 seats even if we regard the special seats to be correctly appraised in the Official Memorandum. No reason whatsoever is given why the Hindus should have a smaller representation than would be justified either by their proportion in the population or by their proportion in the voting strength. As a matter of fact the same considerations that were allowed to weigh in giving heavy weightage to Muslims in 6 Provinces and to Sikhs in the Punjab have full validity in justifying an adequate improvement in the position of the Hindu minority here beyond their population basis. (I am not speaking on the merits of the Sikh claims to have further and larger weightage given to them for special reasons urged by them.)

19. In this connection we have to remember further how the Hindu position would deteriorate because—

- (i) of the removal of the official *bloc* which had tempered any extravagant communal claim on the part of a community that had majority representation, and
- (ii) also that the Muslim members represent a solid compact *bloc* to which at least some Hindus have throughout the history of the Council been attracted for reasons which it is not necessary to canvass here and thus reducing the Hindu figures below their proper strength. Nor can we forget the general attractional force which is bound to make the Europeans and Christians, apart from other considerations, gravitate towards the largest group in the House.

20. We must further remember that a clear communal majority and political domination on the part of a single community particularly in the circumstances of the Punjab over the other two leading communities should not be permitted because it is not giving effect to any proper political principle and the object of a responsible political system even in India cannot be to enthrone a community as such in political domination. The Hindus, and I think the Sikhs, have made no secret of this that if communal representation were not to exist they are prepared to take their places in the fortunes of any general election even though that

might be to reduce their position below their present strength, but they are equally emphatic that by no statute or rule should political domination be given merely to a religious community. In any event it is clear that the position of an important minority, if not actually improved, should not be made worse than it is at the present moment. As I have said above I have failed to discover in the Official Memorandum any justification or reason for proposing to worsen the Hindu position. The Hindus of the Punjab constitute a minority, that judged by every standard justifying special consideration, should receive additional representation as a minority: they have high voting qualifications, they have undertaken heavy sacrifices in the cause of general social reform, and have pursued successfully expensive programmes of educational work (at Lahore they have 3 Colleges as against one Muslim and in the Mufassil they have established a large number of high schools, Intermediate Colleges and one degree institution), and they take a notable position in all progressive movements. Political training, educational advance, economic strength alike point to special consideration for the Hindus here, once the standard of population is departed from in any part of India and communal representation is enforced.

In the Punjab the insistence on separate electorates is made by the community that is in the majority.

21. Paragraph 33 of the Official Memorandum throws a considerable light on the voting strength of the various communities.

22. Coming to the special seats, I think, they ought to be kept completely outside the purview of communal calculations. This principle is well recognized in the Montagu-Chelmsford report and other constitutional documents of importance. With regard to the details of special seats referred to in paragraph 31 of the Official Memorandum I would point out that it is erroneous to consider the University, Industry and Commerce seats as Hindu. These seats are not reserved for Hindus and non-Hindus do stand and compete and influence elections, and the constituencies are non-communal and presumably affect representation. In the University constituency the position is such that in case of a contest if the number of Hindu candidates was more than two, as has not been unknown, a Muslim has a fair chance of return.

*Commerce.*—This seat has during the last three elections gone to a European Christian and I cannot see that it should be now considered as one which will necessarily fall to the lot of the Hindu.

*Depressed Classes.*—I do not favour that a further schism should be created in the already unfortunately small number of Hindu seats by giving one to the depressed classes as such. The Official Memorandum does recognize in paragraph 25 that their numbers are apt to be exaggerated, they do not represent a pressing problem in the Punjab, some of them at any rate will come through general constituencies because of the enfranchisement of tenants and some might get representation in the special labour constituency. The Hindu depressed classes do not as such represent any special economic position. In the circumstances, particularly as a special

constituency cannot be created for them, I do not agree that a nominated representative from out of the Hindu members can be properly carved out for them.

The additional labour seat is regarded indeterminate by the authors of the Official Memorandum. It appears to me that this seat is almost certain to be a Muslim seat. They represent the larger mass of labour in urban areas where alone a constituency such as is contemplated can be created.

At present a special constituency exists for Industry, and I can see no reason why this should be dropped. Industries represent a big and growing interest and if special representation is to exist at all Industry certainly is clearly marked for distinct recognition, especially as the number of industrial concerns is now on the increase. All the circumstances that led to the creation of the seat have gained in strength since 1920.

On the question of landholders' constituencies I am in entire agreement with the report of the Simon Commission. Large landholders occupy a very prominent place in our legislature even at the present moment and there is no reason why their presence should be secured by the device of special representation or their numbers increased. In the Official Memorandum it is proposed to increase the number of Muslim landholders from 1 to 2.

The retention of a seat for the small and special class of the Tumandars of Dera Ghazi Khan—a district only a part of which can be regarded as properly Punjab—seems to have no justification whatsoever. No Tumandar interests have occupied the attention of the Legislature during the past ten years, and to give one seat to a constituency of only ten votes appears to be the negation of all sound principles of special representation.

To sum up, in my view therefore the Industry seat should be retained, there is no occasion to have special seat for the depressed classes to be filled up by nomination from out of the Hindu seats, the special representation of landholders should cease and the Tumandar seat should be abolished. I agree to a seat for Christians, one also for labour and the seats proposed for Europeans though it must be remembered that, in so far as these seats constitute representation beyond what would be justified by their strength in the population, they tend to affect adversely the Hindus and the Sikhs more than the Muslims.

23. I apprehend that the deterioration proposed in the Hindu position in the Official Memorandum will have most unfortunate consequences throughout the country: *heavy weightage at the cost of Hindus to Muslims in other Provinces, depression of Hindus below both their population strength and voting strength in the Punjab where they are in a minority.*

*Paragraph 33 of the Official Memorandum.*—Even this rough calculation of voting strength indicates that the Hindus should receive a larger measure of representation.

24. I agree with paragraph 34 of the Official Memorandum.



25. *Paragraphs 35 and 36.*—I have already said that the seat for industry should not be abolished. I see no reason to differ from the conclusions of the Commission with regard to landlords.

26. *Paragraph 37.*—I agree that the nomination should be limited very narrowly but as I have said already it would not be proper to carve a seat for the depressed classes from the already very inadequate Hindu representation.

27. *Paragraph 39 of the Official Memorandum. Paragraph 95 of the Commission's Report.*—I agree that a constitutional resolution such as mentioned should be competent for a legislature but I see no great likelihood of any good emerging from it if communal and separate electorates are fixed now.

### C.—*The Franchise (Chapter 3).*

I agree with sub-paragraphs (1) and (2) of paragraph 42 of the Official Memorandum. It is desirable that the disparity between the percentages of enfranchised urban and rural populations respectively should be reduced, and also that a portion of the tenants of land should receive vote. But I regret that the authors of the Official Memorandum differ from the Simon Commission Report as regards the enfranchisement of women. Further in paragraph 106 of the Commission's Report it is suggested that it might be desirable to introduce an additional qualification based on education independently of property such, for example, as the attainment of the 5th class before leaving school. In sub-paragraph (4) of paragraph 42 of the Official Memorandum it is not prepared to give the right of vote even to those who have passed the Matriculation Examination of any University which is much higher than what was contemplated by the Simon Commission Report. I am very clearly of opinion that this additional franchise based on the Matriculation Examination should be created. It will not add to any large extent to the electoral roll and it might have some encouraging effect on the progress of education and I am sure would be popular.

29. *Paragraph 43 of the Official Memorandum.*—I am in general agreement with the view expressed in this paragraph that it will not be desirable at the present stage to reduce property qualifications below what might result in more than doubling the present number of voters. In fact it is doubtful whether such a big step should be taken at once.

The factors involved in lowering the qualifications are so complex that they can only be investigated by a special committee on franchise, such as is suggested in the Simon Commission Report.

### D.—*The Second Chamber (Chapter 4).*

30. I am also of the opinion that, so far as this Province is concerned, the balance of argument is against having a second Chamber. I am not sufficiently familiar with conditions in other provinces but my opinion is that the general circumstances which led the authors of the Montagu-Chelmsford Report to regard the

second Chamber as impracticable, and unnecessary in provinces still hold good, and the argument of Abbé Siéyes about the superfluous character of a second Chamber apply at any rate so far as the constituent legislatures of any federation are concerned.

#### IV.—THE BACKWARD TRACTS.

##### (PART III, CHAPTER 2.)

31. *Paragraphs 47 and 48 of the Official Memorandum.*—I fully agree with the views expressed in these paragraphs.

#### V.—THE CENTRE.

##### (REPORT, PART IV.)

##### A.—*The Federal Assembly.*

32. *Paragraph 49 of the Official Memorandum.*—I have already said that I deprecate the idea of indirect election for the Federal Assembly. There is no precedent for it in the history of Federations. It will tend to impair the efficiency of the Chamber as an organ for the expression of opinion on subjects of vital Indian interests or on legislating on these subjects.

I find it difficult, partly in view of the fact that I have not accepted the official recommendations as regards the numbers of our Council or their allocation among the various communities, to work out the probable effects of the method of proportional representation in case indirect election is adopted.

33. *Paragraph 50 of the Official Memorandum.*—I fully agree that it will not be possible nor would it be appropriate that a person should be a member of both legislatures at one and the same time.

34. *Paragraph 51 of the Official Memorandum.*—There is not enough material to indicate whether the communal proportions calculated in paragraphs 143 and 145 of the Simon Commission Report would actually result. I wish to make no observations about the feelings of any one community that their representation in the Assembly should substantially exceed their proportion in the population of the country, but it is clear that if any such weightage is to be given to any community in the Assembly the case for the Hindus in the Punjab for substantial weightage beyond that indicated by their numbers would further gain in strength.

In paragraph 52 of the Official Memorandum the method advocated in paragraph 139 of the Simon Commission Report to secure representation for various classes and interests is described as one proceeding mainly on federal lines. I do not see how this method proceeds on any lines that can be properly described as federal, but it is possible that the method may secure some approach to a due share of representation to the various communities (*i.e.*, of 'due'

is used in the technical sense of reflection of members belonging to a particular community in a province) irrespective of whether this representation is in itself fair or just. But I am not clear that the method will secure adequate representation for such interests as industry, commerce and finance.

### B.—*The Council of State.*

35. *Paragraph 54 of the Official Memorandum.*—I support a Second Chamber in the Central Legislature, and that its term should be seven years. A bicameral system exists in most countries and the need for it is recognized.

As regards the number, in my view it should not be less than half the size of the Assembly, otherwise its voice will not have its proper weight in a joint session. I have no strong feelings about what proportion of such a House should be elected and what nominated, nor as regards the composition of the nominated members.

36. *Paragraphs 54 and 55 of the Official Memorandum.*—On the whole I am in favour of direct election. The electorate is at once highly qualified and small and there is no occasion for resort to indirect election. The one essential for the composition of an upper House is that it should not be a mere replica of the lower House and at the same time should not interfere with proper democratic form of Government.

37. *Paragraph 57 of the Official Memorandum. The Power of Legislation of the Central Government.*—I am in agreement with the recommendations contained in the Simon Commission Report and would deprecate all attempts to restrict the range of the legislative powers at the Centre. There is no occasion for unnecessary suspicion against the Central Legislature. Abundant safeguards, as pointed out in this paragraph, are already available and the concurrent jurisdiction of the Central Legislature where it exists should not be curtailed. I also agree with the opinion expressed at the close of paragraph 155 of the Commission's Report.

### C.—*The Governor-General in Council.*

38. I share the general Indian opinion that a certain measure of responsibility should be introduced in the Central Executive, and the Indian demand on this head is well known and I find myself in general agreement with it. I am not impressed by the arguments urged in paragraph 60 of the Official Memorandum for deferring this responsibility at the Centre. The force of Indian sentiment is a powerful political fact which cannot be ignored. The responsive spirit to which the Official Memorandum refers in paragraph 63 affords no substitute for the clear demand made by political India, and it is doubtful whether the Commission's report really makes any provision for the growth of such a spirit. The device that the Members of his Executive Council should be appointed by the Governor-General in place of the present system of appointments being made on the advice of the Secretary of State for India by His Majesty and the possible occasional selection of

an elected member would not secure the object. On the other hand if the present system is to continue, that is, there is to be no responsibility at the Centre, my opinion is that the existing system of appointments should not be disturbed because that will be the only method of securing some measure of independence for members of the Executive Council.

*D.—Relations between the Centre and the Provinces.*

39. *Paragraphs 68 to 71 of the Official Memorandum.*—I am in general agreement with these paragraphs of the Official Memorandum.

**VI.—THE QUESTION OF DEFENCE AND THE ARMY.**

40. The Simon Commission Report emphasizes that for a 'very long time to come it will be impossible for the Army entrusted with the task of defending India to dispense with a very considerable British element'. It conveys a strong warning against what it describes 'a precipitate embarkation on a wholesale process of substituting Indian for British personnel'. It speaks of the 'difficulty almost insurmountable of relinquishing control over an Army so composed to any Ministers responsible to an elected legislature'. Such a transfer according to the Report 'could only take place when no part of the Army in India consists of British Officers or troops recruited by the Imperial Government', and it sees no prospect of this happening for many years. A complete Indianized Army is not within sight at all. The Report then proceeds to emphasize the Imperial aspect of Frontier defence. It then comes to the conclusion that in view of this and other circumstances the Army in India should be removed from the control of the Government of India and placed under an Imperial Agency. 'India and Britain are so related that Indian defence cannot now or in any future which is within sight be regarded as a matter of purely Indian concern'. It propounds the strange doctrine that the 'protection of the frontiers of India at any rate for a long time to come should not be regarded as a function of an Indian Government in relation with an Indian Legislature but as a matter of supreme concern to the whole Empire which can only be effectively organized and controlled by an Imperial Agency'. It therefore inevitably follows that the forces composing the 'existing Army in India would no longer be under the control of the Government of India, but an Imperial authority which would naturally be the Viceroy acting in concert with the Commander-in-Chief' should have charge of this army.

Now it is obvious that no responsible Government in India can be established unless the country is able to look after its own defence. The Commission removes India's defence from India's control and yet for some reason, which it is not easy to see, in paragraph 208 of their Report, the Commission regards their scheme as removing a block on the line of India's constitutional advance. In paragraph 214 the possibility of their scheme being regarded as 'a derogation from the full range of Indian aspira-

tions' is considered, but an answer is offered at the end of the paragraph in words from which I at any rate have not been able to spell out any meaning.

41. In paragraph 211 of their Report the Commission speaks of the possibility of an alternative Dominion Army containing no British element which the Government of India might organize. The Commission does recognize that there is no finance available for the development of such a force because of the heavy contribution which India already makes towards the maintenance of the present Army. It is not even pointed out that as this Dominion Army grows, *pro tanto*, there might be a corresponding reduction in the existing Army to be hereafter regarded the Imperial Army. It is difficult therefore to understand what the Commission means at the end of the paragraph by saying "We appreciate the fact, however, that in the end a self-governing India can only, hope to function with reasonable prospect of success if it can command military forces of its own, and our proposal helps to remove an obstacle to the ultimate possession of such forces". An adequate military force of its own will certainly cost India something approaching what the present Army costs. Is it then to be expected that India can by some magic out of her limited resources find itself one day in possession of such a Dominion Army side by side with the existing (Imperial) Army? It appears therefore that if Indian political advance can be secured only by looking after her own defences the proposals of the Commission postpone this date to the Greek Kalends.

42. In paragraph 74 of the Official Memorandum the main features of the Commission's scheme are set forth and later a reference is made to the eventual emergence of a Dominion Army and the position during the transitional period. As I have already remarked, so far as the Commission is concerned, the limit of transition period is not discernible as far as the eye of man can penetrate, and the Indianized Dominion force can really never materialize.

43. In paragraph 77 of the Official Memorandum opinions are expressed about the Indian feeling on the more rapid growth of Indianization. With these I am in full sympathy.

The proposals of the Commission while they fail in the supreme test which is to be applied to all constitutional proposals for this country, *i.e.*, how far they envisage a rapid movement towards responsible Government do not make clear why even the present contact with the Army that the Government of India has should disappear. While the demand of political India is that the control of defence may be kept from a responsible executive only for the short period of transition, the Commission roundly suggests that the Government of India should have nothing to do with defence!

44. I agree with the Official Memorandum, paragraph 78, that if a Committee is to be all the contact which the Government of India is to have with the Army we may ask for the enlargement of the functions of this Committee such as are suggested in para-

graph 78 of the Official Memorandum. I do not, however, see the exact force of the suggestion that Indian members of the Governor-General's Executive Council should be included in this Committee unless it is intended to be a counterpart of the claim made by many thoughtful Indians that while the subject of defence continues reserved the Member in charge should be an Indian Member of the Governor-General's Executive Council.

45. I am in general agreement with paragraph 79 of the Official Memorandum.

46. I agree with paragraph 170 of the Commission's Report that the Commander-in-Chief should no longer be a Member of the Cabinet or in the Legislature, but I am distinctly of opinion that questions of defence should fall within the portfolio of a Member of the Executive Council and should not be dealt with merely by an Army Secretary.

## VII.—FINANCE.

### (REPORT, PART VIII.)

47. The Official Memorandum does not attempt to deal with the details of Sir William Layton's scheme because of the lack of necessary data for adequate expression. I have also felt that in this scheme expectations of revenue and estimates of income and economies in the growth of Central expenditure are framed on an unduly optimistic basis. Some of the features of the scheme, however, can be fully endorsed such, for example, as the recognition of the need of the provinces to expand especially in nation building activities.

48. On the question of surcharge on personal income I had occasion to express my views in the Minute which I submitted to the Simon Commission. (This is partly reproduced below for convenience of reference.) I do not agree with the suggestion made in paragraph 82 of the present Official Memorandum that the Provincial Government should have the discretion to tax incomes below the present exemption limit of Rs. 2,000. This would probably occasion a "disparity in the system of income-tax between the various provinces and it is obvious that this must be open to grave objections as such taxes are not only likely to be evaded, but calculated to injure trade and industry in a province. Nor are the political consequences of placing such power in the hands of a legislature predominantly rural and non-income-tax-paying to be ignored. The system of income-tax including as an essential factor an exemption minimum, must be uniform throughout the country—a departure from this well accepted principle will be economically without warrant and politically undesirable".

49. I wish to offer at this stage no observations on the new Provincial taxes referred to in paragraph 83 of the Official Memorandum.

50. *Paragraph 86 of the Official Memorandum.*—I agree on the general question for adequate safeguards against the most populous provinces imposing their will on other provinces.

51. I am also in agreement with paragraphs 88 to 92 of the Official Memorandum.

## VIII.—THE SERVICES.

### (REPORT, PART IX.)

52. In regard to services two considerations offer themselves:

- (i) it is undoubtedly necessary that for some period of time All-India Services even in a newly reserved Provincial field must continue, and probably the best method of recruitment for these is by the Secretary of State for reasons detailed in paragraph 93 of the Official Memorandum. The Memorandum, however, does not define the transition period during which this obvious constitutional anomaly must continue. Complete authority as regards recruitment and control of public services is necessarily implicit in any full system of responsible Government.
- (ii) the second important consideration is that the continuance of these services should not so operate as to defer even by a single day the achievement of full responsibility, and this is the test which must control our views as regards the services.

In my view the date, 1949, suggested by the Official Memorandum for a reconsideration, is far too remote and if political conditions which India desires are to obtain I am distinctly of opinion that Indianization will have to proceed much faster than at the rate contemplated by the Lee Commission.

It is not necessary for me to enter into the details of privileges which have to be conceded either to existing officers in All-India Services or to future recruits but it may be said that while all proper safeguards for existing officers must continue it would be impolitic and unfair to extend their privileges as regards retirement or otherwise beyond what are secured to them at the present time, and as regards future recruits special privileges should be confined within the strictest limits so as not to conflict unduly with the rights of a responsible executive to control services.

53. *Paragraph 102 of the Official Memorandum.*—I agree that a Provincial Public Services Commission should be established.

I fear that in our services the paramount interests of efficiency are not infrequently ignored as concessions to communal claims. The evil is so persistent that the necessity of adoption of suitable safeguards even by regulation by Statute is often strongly urged. The expression "just and reasonable claims" of any community is difficult to define. In the Punjab this has taken a double shape. Firstly admission in the Professional Colleges is itself regulated along communal lines and even then the successful candidates have not the chance of admission into Government service on the basis of efficiency. The claims of communities have to be considered for a second time. The position is further complicated by the fact that

definite policies have been laid with regard to the recruitment of agriculturists as such to public services. The double requirements of communities and of belonging to a particular profession have to be satisfied and it is not difficult to see how the interests of efficiency must suffer in arrangements of this character. I entirely agree with the official view that fixed percentages or recital of rights in Statute appear to introduce an element of undue regimentation, and the matter must be left, so far as possible, to the general discretion and powers of the Governor.

## IX.—THE HIGH COURTS.

(SIMON COMMISSION REPORT, PART X.)

54. I am in entire agreement with the recommendations of the Simon Commission in Part X of their report. The administrative and financial control of the High Court and its establishments, buildings, contingencies, etc., should be assumed by the Governor-General in Council and these matters should be a charge on Central revenues as recommended by the Commission. There need, however, be no change in the functions of the provincial executive in connection with the administration of the subordinate judiciary and their relations with the High Court in this connection. I am unable to accept the arguments in paragraph 109 of the Official Memorandum where a doubt is cast on the validity of the recommendations of the Commission. The High Courts have considerable power under the Letters Patent in connection with their establishments and these powers should not in any manner be curtailed and should receive their full scope as would be possible under the recommendations of the Commission.

## RELATIONS BETWEEN THE HOME AND INDIAN GOVERNMENTS.

(SIMON COMMISSION REPORT, PART XI.)

55. *Paragraph 110 of the Official Memorandum.*—I agree.

MANOHAR LAL,

*Minister for Education, Punjab.*

*The 11th August 1930.*

---

## ENCLOSURES.

(1) Letter from Nawab Malik Mohammad Hayat Khan Noon, Commissioner, Lahore, Division, No. 637/C., dated Lahore, the 31st July 1930.

I have the honour to forward a copy of the letters received from the Deputy Commissioners of the Lahore Division. I have hardly anything to add to what has been said by the Deputy Commissioners



as to the reception given to the recommendations of the Commission in this Division. The urban Hindus can hardly be differentiated from the Hindus who belong to the Congress, and all of them equally condemn the report. This also applies to the educated shop-keepers, and traders of the rural areas. The Sikhs are also dissatisfied with the report, and the extremist Sikh is just as earnest in condemning the recommendations of the Commission as the Congress. The Mohammedans are also not pleased with the report and they think that in the Punjab and Bengal they have not been recommended for the majority of seats in the Legislatures to which they are entitled by population and that refusal to separation of Sind is also another legitimate grievance. Probably they are inwardly satisfied over the proposed separate electorates and with the proposed Provincial Autonomy system suggested by the Commission. The ordinary Zamindars of the rural area have not taken the trouble to acquaint themselves, with the recommendations of the Commission, and they do not worry themselves over it. The cheapness of agricultural produce is their chief grievance. All the educated Indians, whether Hindus, Mohammedans or Sikhs, are dissatisfied with the following proposals of the Commission, namely,—

- (1) that the Governors should have the power to appoint ministers from the officials or non-elected members; and
- (2) the slow Indianization of the civil and military services.

2. I believe very few people have read the report, and their opinion and conversation are based on what has been said in the press about it.

---

(2) Letter from E. M. Jenkins, Esq., I.C.S., Deputy Commissioner, Hoshiarpur, No. 181/S., dated the 24th July 1930.

I have the honour to say that little active interest in the report of the Statutory Commission has been shown in this district. Indeed, so far as I am aware, the Rev. F. B. McCuskey of the A. P. Mission is the only resident of the district who is in possession of both volumes of the report. Even I am in possession only of the second volume. In the circumstances it is idle to expect any very useful contribution to the discussion of the reforms from my visitors. Their knowledge of the proposals of the Commission is based solely on the summary which appeared in the press, and their criticisms are usually taken ready made from whatever newspaper they happen to read.

2. So far as the congress party is concerned, their attitude can be judged by the speeches made at public meetings. These speeches make no attempt at a detailed analysis of the proposals or at constructive criticism. When the Commission or the report are mentioned they are referred to in terms of obloquy. There is no congressman of any brains or education at large in this district at present; and any public opinion discernible in congress circles finds expression merely in unintelligent condemnation.

Most urban Hindus are in sympathy with the congress, but from conversations with educated men of this class who are not professed congressmen, I should judge that they are disappointed with the proposals mainly (a) because the residuary powers to be left to the Governor are considered to be incompatible with a democratic constitution; and (b) because indirect election to the Central Legislature, and the independent powers of the Governor-General and the Central Executive are regarded as reactionary. This latter objection is perhaps attributable not so much to abstract principles as to a feeling that the Hindus could dominate the whole country through a central organisation possessing great powers and controlled by a directly elected legislature. In other words, I suspect that the urban Hindu would prefer a federation based from the first on the centre. For his taste the present proposals smack too much of an ultimate federation of sovereign states in which the federal Government will merely co-ordinate and administer certain central subjects by common consent.

The Muhammadan community generally is more easily satisfied. The idea underlying the proposals is approved, and I have heard no hint of a criticism that may be regarded as fundamental. But it is felt (a) that the treatment of the Muhammadan majorities in Bengal and the Punjab is inconsistent with the treatment of the Hindu majorities in the United Provinces and elsewhere, and (b) that the arrangements at the centre might be more satisfactory. On the first of these objections the argument is that the non-Muhammadan minorities in the Punjab and presumably in Bengal are allowed "weightage" just as the Muhammadan minority in the United Provinces is allowed "weightage" but while the Commission has not scrupled to allow the Hindus the full advantage of their numbers in the United Provinces, a similar advantage has been denied to the Muhammadans in the Punjab and Bengal. This point was not adequately dealt with in the summary, and the reasons for the Commission's recommendations are only clear from the report itself. On the second objection, I cannot be very definite, but I think that direct election to the Central Legislature is favoured, though the Muhammadan idea of what the Central Government should be is by no means the same as that of the urban Hindus.

Of the Zamindar class, the vast majority do not know what the Commission was, why it was appointed, or what its recommendations are. The educated *zamindar* of the *zaildar* class troubles himself very little over the whole matter, and I have heard few definite opinions or criticisms.

3. To sum up, the congress professes to be irreconcilable. The report is opposed to educated Hindu opinion because it is believed that a federation of a different type would be more advantageous to the Hindu community, and because the proposed provincial autonomy is regarded as neutralized by reactionary safeguards. It is criticised by intelligent Muhammadans as unfair on the minority question, and as reactionary as regards the Central Government. It has hardly been examined at all by the *zamindars* other than

those who by up-bringing or education take a definitely communal view of politics and share the views of the educated members of their community, *e.g.*, relatives or friends of the Pleader class. I think that the Muhammadans and the *zamindars* generally will regard the provincial recommendations as a real advance and will be satisfied with some modifications at the centre. But the Hindu criticism I should judge to be fundamental, and I doubt if there will be any willing acceptance either of the provincial or of the central arrangements whatever minor modifications may be made.

---

(3) Letter from Khan Bahadur Mian Abdul Aziz, M.A., C.B.E., Deputy Commissioner, Jullunder, No. 595, dated the 21st July 1930.

I have the honour to submit a brief report regarding the receptions given to the recommendations of the Commission in Jullunder.

2. Nobody in the district appears to have studied the report. Whatever opinions have been arrived at have been arrived at on the basis of notices in the Press and as there notices have been neither fair nor exhaustive there is good reason to conclude that an unfavourable reception was inevitable. The report would have had quite a different reception if the Commission had arranged for skilful publicity through a series of lectures (arranged beforehand) that could have been delivered at important centres soon after the publication of the 2nd Volume of the report.

3. The Jullunder District has a number of Congress Workers but no congress politicians of any note. The workers take their cue from what is said in Bombay or Simla and never give themselves the trouble of thinking about constitutional questions in the light of actual facts. The same remarks apply to Sikh and Muslim organisations in the District. There is only one word to describe political thought as it exists in Jullunder—*imitation*. And Jullunder is typical of the Punjab.

---

(4) Letter from P. Marsden, Esq., I.C.S., Deputy Commissioner, Gurdaspur, No. 519, dated the 24th July 1930.

I have the honour to inform you that the following is my estimate of the reception given to the recommendations of the Indian Statutory Commission in this district.

2. The zamindars of the villages know and think very little about it.

3. Hindu congressmen, so far as I can find, have had a nasty shock. Their game is chiefly of bluff, and until now they were under the impression that despite the intensive campaign of rudeness against the gentlemen who were members of the Commission, nevertheless the report would turn out to give them very much more than it has. Their references to it continue to be mere blind abuse, as the congress is a well drilled body, and all its members repeat the slogans of their leaders without either understanding or thinking much about them.

4. Neutral or anti-congress Hindus appear to be disappointed, partly because they expected changes of an even more radical nature, and partly because the report has to some extent awakened them to a sense of the realities of the situation. References in the Report to the Indian States and to the defence of India have made them begin to think that the difficulties are hardly to be solved by the facile methods of Gandhi and Nehru. Also they are disappointed by a feeling that not only have the Muhammadans scored, but that the completeness of the reasoning of the report makes it most unlikely that their decisions in this respect will be reversed.

5. The Muhammadans are a great deal more definite in their appreciations of the Report than the other communities. Inwardly they feel considerable satisfaction at some of the most vital of their claims having been conceded. As Punjabi Muhammadans they welcome the proposals for provincial autonomy, the abolition of dyarchy and the method of election of Legislative Assembly members. When questioned they invariably claim a good deal more than the Commission proposes to give them, both as residents of India and as members of the Muhammadan community. But I am convinced that the average thinking Muhammadan feels that the claims of his community have been thoroughly and sympathetically weighed, and also that he has a feeling of relief that in matters of defence and ultimate safeguards the determination and common sense of John Bull appear to be standing firm against the sentimentality and plausibility of Mohan Gandhi.

---

(5) Letter from Rai Sahib Lala Labhu Ram, M.A., LL.B., Deputy Commissioner, Gujranwala, No. 568, dated the 28th July 1930.

I have the honour to say as follows:—

2. The report has not been received with satisfaction or approval by any community. All the three communities (Mohammedans, Hindus and Sikhs) regard it more or less, as being retrograde and reactionary.

3. Muhammadans generally and Muhammadan Zamindars approve the retention of separate electorates with satisfaction. They also view with favour the new provincial constitution and the abolition of dyarchy but they take exception to the empowering of Governors to appoint non-elected ministers. They want modifications in the following important matters:—

- (a) Election to the Federal Assembly direct votes.
- (b) Appointment of elected members as ministers in Provincial Governments.
- (c) The raising of a national Army in India and the speedy Indianization of the Military and Naval Services and the establishment of an Indian Sandhurst.
- (d) They want 1/3rd share in the Federal Legislature and Federal Cabinet and also an increasing share in the Services.

- (e) Separation of Sindh from Bombay Presidency.
- (f) The grant of full reforms to the N.-W. F. Province.

4. The views of Hindus generally are:—

- (a) They oppose the separation of Sindh and urge that the interests of Hindus in the N.-W. F. P. be safe-guarded in the contemplated scheme of reforms.
- (b) That the interests of Hindus who are a minority community in the Punjab have not been safe-guarded by the Commission.
- (c) The claim of the Muhammedan community to absolute majority in the Punjab is tantamount to substituting Muslim Raj for British Government and this should not be allowed.
- (d) Recruitment to services should be by merit.
- (e) A further division in the Hindu Community be not created by the reservation of seats for the depressed classes.

5. The Sikh view is as follows:—

- (a) The absence of any reference to Dominion status in the report is most disappointing.
- (b) Proposals about the Army are unsatisfactory.
- (c) Provincial autonomy is nominal on account of the over-riding powers of the Governor and Ministry nominated by the Governor consisting also of officials.
- (d) Adherence to Lucknow pact to which the Sikhs were never a party, is not liked.
- (e) 2 per cent. of the elected seats to the Sikhs in the Assembly would not do while 10 per cent. are allowed to Europeans with a far smaller population.

The Sikhs want that—

- (a) the provinces should be autonomous but residuary powers should be vested in a strong Central Government.
- (b) Sikhs should be allowed the same treatment as it is meted out to Muslim minorities in other provinces, *e.g.*, the United Provinces.
- (c) Sikhs will refuse to be governed by Muhammadans in this province.
- (d) Adequate share in the services.

*General.*—It appears that besides the removal of main defects in the report, each community wants to safe-guard its own interests and each is suspicious of the other. If one community is made master of the situation there will be endless trouble as Hindus and Sikhs will combine and will not submit to the dominance of the majority community.

(6) Letter from R. H. Crump, Esq., I.C.S., Deputy Commissioner, Amritsar, No. C-224, dated the 29th July 1930.

I have the honour to say that so far I have been unable to find any resident of the Amritsar district who has perused the Report. It is true that a debate upon the subject was held in the Municipal Committee, Amritsar and the resolution passed that the Report was reactionary, retrograde, unacceptable and impracticable. None of the members who spoke either for or against the resolution had read the Report themselves nor had the President who presided at their deliberations. The result is that any opinion expressed is entirely coloured by the views of the particular newspaper which the gentleman in question regularly reads. I am asked to give my estimate of the reception given to the recommendations of the Commission by the Congress party, the Urban Hindus (so far as disassociated from the Congress), Mohammedans generally and Zamindars generally. The Congress party has not taken the trouble even to read or attempt to understand what is actually proposed. From the very beginning they were prepared to damn the Report root and branch. There are no Urban Hindus disassociated from the Congress whose opinion is of any value. In regard to the Mohammedans, while supporting the Federal System and Separate Electorates, there is a feeling of considerable disappointment that they have not obtained their desired proportional majority in the Punjab and Bengal and that there is no definite proportion of posts reserved for them in the various services. Full reforms in the North-West Frontier Province and the separation of Sindh are subjects in which they profess to be keenly interested and somewhat disappointed that definite proposals have not been made for both. In regard to Sindh they have, most of them, quite omitted to notice that the possibility of its separation is bound up with the question of the appointment of the Boundary Question which the Simon Commission has recommended.

Zamindars generally are completely ignorant as to what the recommendations are and take not the slightest interest in the matter. The drop in the price of wheat is a matter of much greater importance to them and the difficulty of paying in the land revenue has caused them to forget that the Simon Commission ever visited India.

---

(7) Letter from E. H. Lincoln, Esq., V.D., Deputy Commissioner, Muzaffargarh, No. 7, dated the 16th July 1930.

I have the honour to report as follows.

2. As far as I am aware no copy of Report has yet reached the district—even I haven't got one and nobody is fully aware of what it contains! Whatever is known, therefore, has been obtained from the newspapers.

3. The district has about 30 members of the Bar, and a handful of fairly well educated zamindars, who alone are able to understand the subject. These hold views borrowed from the principal newspapers in the Punjab, which they read, *i.e.*, the Hindus

“ think ” in terms of the “ Tribune ”, and the Muhammadans in terms of the “ Muslim Outlook ”. A few others who are not quite so well educated are content to second these views also.

A few Hindu Pleaders who are moderates held a meeting at my request, to consider the matter, and the attached memo. shows their objections to the recommendations which are otherwise approved generally.

4. The bulk of the population, however, is ill-educated, and has little idea about the present constitution let alone the changes now recommended or being clamoured for by politicians. The vision of these people does not extend beyond the district. They vote at Council and District Board elections according to the “ izzat ” of the candidate, or out of obligation to him or to some supporter, and quite regardless of what he intends to do for them; and they never know what he is doing or has done for they do not realise he has any power. Their only wish is to have good officers to give them peace and justice and help them to improve their lot. They have no desire to change British Officers, but want them for preference at the head of the various departments, and would resent any change if they were to realise the full meaning of the reforms. They have shown opposition to the Congress because they were told that it seeks to take the Raj from the British. They have no desire to have a *Riyasat* raj.

#### *Comments on Simon Commission's Report.*

1. Selection of Ministers should be made by the Governor out of the elected members of the Council.

2. The Governor should not preside over the meetings of the Cabinet.

3. The appointment of Cabinet Secretary should rest with the Ministers subject to the sanction of the Governor and the Secretary should not have direct access to the Governor.

4. As regards election of members, seats should be reserved for every community on the basis of the mean of population and voting strength, as is the case now in Municipalities. The minorities might prepare a list of their representatives and these should be considered as candidates for joint election as suggested by Major Atlee.

5. There should be no distinction between votable and non-votable items of finance, the whole budget should be subject to the vote of the council.

6. The appointment of the Ministers of the Government of India may rest with the Governor-General but the Ministers should be selected out of the *elected* members of both houses and they should be responsible to the Assembly.

7. The Commander-in-Chief should be a member of the Government of India and the Government of India should be held responsible for the defence of India.

8. The Government of India with certain reservations necessary for the transitional period, should be responsible to the Indian Legislature. The Governor-General should have extraordinary powers in case the constitutional breaks down. Foreign relations should be under the Viceroy.

9. The recommendations of the Simon Commission with reference to the Army are retrograde in character. The Sken Committee's report should be acted upon.

10. The separation of Burma from India should be left to the choice of Burmese themselves.

11. The recommendations of the Simon Commission with reference to the public services are sound.

12. The election to the Legislative Assembly should be direct on the basis of joint electorates with seats reserved on population basis.

13. All other recommendations of the Simon Commission are sound and acceptable.

---

(S) Letter from A. V. Askwith, Esq., I.C.S., Deputy Commissioner, Multan, No. 106-C., dated the 22nd July 1930.

I have the honour to submit my report regarding the reception given in this district to the recommendations of the Indian Statutory Commission.

2. The issue of the report has excited little interest here. I doubt if two hundred non-officials could be found in the district who could state even of the broad lines of the Commission's proposals. Outside the towns even the fact that a report has been issued is scarcely known.

3. The attitude of the Congress party to the report is well known. As regards urban Hindus, I would say that at present they are generally in sympathy with the Congress. Educated Muslims are interested only in those parts of the report which deal with the question of communal representation.

4. "Zamindars generally" take little or no interest in the movement for constitutional changes. I would say that their interest in politics is confined to dissatisfaction at the spread of corruption in the public services, and the results of over-rapid Indianisation, particularly in the Irrigation Department. The demand among them for European canal engineers is strong and widespread.

5. I have ventured to mention this last point, though not strictly relevant to the present reference, because it seems to me that the headquarters authorities are sometimes inclined to shut their eyes to the extent to which the agricultural masses are being alienated from our Government by the increasing corruption and inefficiency. To me this appears the most serious feature of all in the present political situation.



Letter from the Chief Secretary to the Government of the Punjab,  
No. 6504-S.-Reforms, dated the 16th September 1930.

In continuation of Mr. Irving's letter No. 4706-S.-Reforms, dated the 14th August 1930, I am directed to forward a copy of a supplementary note by the Hon'ble Captain Sikandar Hayat Khan, the Hon'ble Sir Jogendra Singh and the Hon'ble Malik Firoz Khan Noon with regard to the proposals contained in the Simon Commission Report. I am also to forward a copy of a note by the Hon'ble Mr. Manohar Lal on the same subject. I am to say that the Governor in Council (excluding the Hon'ble Revenue Member who has signed one of these notes) has nothing to add to the opinion already expressed and communicated to the Government of India.

---

We have already in our notes laid emphasis on the need of special representation of the land-holders. It is our considered opinion that these interests should be fully and adequately represented both in the Provincial and Central legislatures not only to safeguard the interests of this important class, but also to provide the necessary steadying influence, in India's march towards democracy. One of us, Malik Firoz Khan Noon, is of opinion that in the absence of a second chamber and in view of the impending lowering of franchise and enfranchisement of tenants, it will be unsafe to provide less than 15 out of 135 seats for the land-holding classes in the Provincial unicameral legislature. We sympathise with this proposal and are of opinion that land-holding interests should find as large a representation as possible, but in case Malik Firoz Khan Noon's proposal is not accepted, we feel, that there ought to be at least five land-holders' seats for the Province from joint electorates.

SIKANDER HYAT KHAN.

JOGENDRA SINGH.

FIROZ KHAN NOON.

*The 12th September 1930.*

---

I have read this note and see no reason to change my opinion already recorded. The arguments now advanced do not appear to me to possess any real validity. There is no reason why an express provision should be made for reserving 15 seats out of 135 for land-holding classes as a large number of rural seats are anyhow certain to be held by members of this class. Nor am I able to accept the proposal that at least 5 land-holders' seats from joint electorates should be secured. The note does not say how these five seats are

to be divided between the various communities nor is it clear whether it is intended to throw open the five seats in joint electorates, each voter having the right to vote for any five candidates without restriction. In view, however, of my general opinion about special representation to land-holders it is not necessary for me to examine this last point in any detail.

MANOHAR LAL,  
*Minister for Education, Punjab.*

*The 13th September 1930.*

---

No. 392-D.-30, dated Rangoon, the 13th August 1930.

From—T. LISTER, Esq., I.C.S., Secretary to the Government of Burma, Reforms Office,

To—The Secretary to the Government of India, Reforms Office.

I am directed to reply to your letter No. F. 67—30-R., dated the 24th June 1930, with which you forwarded a copy of letter No. 67—30-R. of the same date to other Local Governments on the recommendations of the Indian Statutory Commission and requested the views of this Government on the portions of the Report of special applicability to Burma. You also invited an expression of any views the Government of Burma might desire to make on the other recommendations of the Commission.

2. *The separation of Burma from India.*—The Commission have given special consideration to the problem of Burma, and have recorded a unanimous opinion that Burma should be separated from India forthwith. The Government of Burma do not think it necessary to examine at any great length the reasons why the Commission have arrived at this conclusion. The conclusion is based on a memorandum prepared by this Government. That memorandum did not purport to do more than examine in a detached and impartial spirit the arguments for and against separation. The Government of Burma arrived at no conclusion in the memorandum, and made no recommendation. Their object was merely to state the case as fairly as they could for consideration by the Commission, and great weight must be attached to the fact that so impartial and authoritative a body have come down so decidedly in favour of separation. Moreover the statement of the case in paragraph 219 of Volume II of the Commission's Report is unquestionably correct. In this paragraph they mention that on the 18th February 1929 the Burma Legislative Council passed with-

out a division a motion in favour of the separation of Burma from India. On the 9th August 1930 the Council passed, again without a division, a motion thanking 'the Members of the Statutory Commission for having in accordance with the wishes of the people of Burma recommended the immediate separation of Burma from India,' and requesting 'His Majesty's Government to make an early declaration of the acceptance of their recommendation'. In neither case did the Government take any part in the debate. It is quite true that Burman politicians of extreme political views who have refused to work the present constitution still believe that Burma would get full responsible government earlier if she remained part of British India, but they wish merely to postpone the day of separation. The Government of Burma believe that they are correct in saying that even these Burmans recognize that ultimate separation is inevitable. The vast majority of Burmans appear to be wholeheartedly in favour of the immediate separation of Burma from India, and the recommendation of the Commission has been received by Burmans generally with genuine pleasure and satisfaction. If for any reason Parliament find themselves unable to accept the recommendation in favour of separation, the disappointment in Burma will be correspondingly great. Burmans (in which term for their present purposes the Government include all races indigenous to Burma) outnumber so greatly all other communities in Burma that it does not seem necessary to discuss in great detail the attitude of minority communities towards the recommendation. The Indian community naturally regards it with dislike. For obvious reasons they would prefer that Burma should remain part of British India, and also no doubt partly as the result of the recent disturbances in Rangoon, they look forward to separation with some apprehension. But as far as the Government of Burma are aware, the attitude of thinking Indians resident in Burma is quite correct. They recognize that if Burmans generally, after full consideration of the issues involved, desire that Burma should be separated from India, that desire should be acceded to, unless it can be demonstrated that for financial, military or other reasons separation is not a practicable proposition. Most of them recognize too that it will be difficult to establish a *caveat* of this kind in face of the reasoned conclusion of the Commission, and it is probable that they will concentrate mainly on securing protection for their interests in the new constitution of Burma. The Com-

mission at the end of paragraph 223 of their Report expressed an opinion that provision of this kind should be made in the new constitution, and the Government of Burma take this opportunity of recording their concurrence in this proposal. The European business community in Burma has a great stake in the country, and its influence is out of all proportion to its numerical strength. The Burma Chamber of Commerce is the medium through which the more important section of this community expresses its views on matters of public interest, and this Chamber has stated that it is 'entirely in agreement with the principle of separation of Burma from India as recommended in the Report'. It considers, however, that it is essential that 'a trade convention should be arranged which would as far as possible maintain a state of free trade between the two countries,' and it also emphasizes that the new constitution of Burma should make due provision for the protection of the interests of the non-Burman communities. The Government have already expressed their concurrence in this latter suggestion, and they will deal later with the question of a Trade Convention. For their own part, the Government of Burma are strongly in favour of the Commission's recommendation, and they regard the case for separation as overwhelming. In expressing this view, they take their stand mainly on the fundamental considerations advanced by the Commission. Burma is an entirely separate country from India, and the Burmans are an entirely separate people. They are not bound to India by any ties of common race or common language or common sentiment. They are not, and never can be part of an Indian nation. As long as there was an autocratic British Government in India, it was convenient to place Burma under the control of that Government, and the position was accepted by the people of Burma, though from time to time symptoms of discontent did manifest themselves. But as soon as His Majesty's Government announced that their policy was gradually to establish full responsible government in India, and as soon as they took the first steps towards that end, the situation began fundamentally to change. Many of the most important and vital functions of government in India are vested in the Central Government, and it was not long before two things became quite plain to thinking Burmans. The first was that the Indian legislature would exercise increasing influence over the Government of India in the discharge of those functions until ultimately the Government would become completely

responsible to it, and the second was that from the nature of things Burmans could never hope to have an effective voice in shaping policy in that legislature. The population of Burma is very small compared with that of British India, and Burma representation can never be large in the Indian legislature. Moreover it was not long before the practical disadvantages of the position were brought home to the people of Burma. The fiscal convention transferred a large measure of control over the fiscal policy of British India to the Indian legislature, with the result that the Government of India embarked on their policy of discriminating protection. At once it became evident that the economic interests of Burma did not always coincide with those of India, and that whenever there was a clash, the interests of the smaller country must inevitably give way. The consequence has been that in recent years the demand for separation has become more and more insistent, and it is not too much to say that as far as Burma is concerned, it was the dominant issue before the Statutory Commission. Now that the Commission have reported so strongly in favour of separation, the demand has become more insistent than ever. In fact it has reached a pitch at which it would be impolitic and unwise to resist it. The Commission have gone so far as to say that 'nothing but the most overwhelming considerations would justify the continued retention of Burma within the Government of India,' and they have recorded their deliberate opinion that those overwhelming considerations do not exist. The Government of Burma are entirely in agreement with this view. Their considered opinion is that the Government of India and His Majesty's Government should accept the recommendation that Burma should be separated from India.

3. In the rest of this letter I am to proceed on the assumption that the recommendation will be accepted, and I am to deal with the more important questions which will require consideration in connection with the process of separation.

4. *The Time-Table.*—The first of these questions is that of the time-table. The Commission's actual recommendation is that 'separation should take place now,' but the context shows that their intention was merely that the question of principle should be decided with as little delay as possible. Their objective was that the new Government of Burma Act should come into force simultaneously with

the new Government of India Act, and they pressed for an early decision on the question of principle in order that as much time as possible might be available for all the preliminary work which must be done before separation can become an accomplished fact. It is obvious that this view must be accepted, and that the time-table of the Government of Burma must keep pace with that of the Government of India. The Government of Burma have no means of knowing when the new Government of India Act will come into being, but they are entitled to assume that no avoidable delay will be allowed to occur in giving British India her new constitution. On the other hand, they are impressed by the amount of preliminary work which must be done before the Government of Burma can become independent of the Government of India. A new constitution has to be devised for Burma as well as for India. The difference is that the Statutory Commission have not attempted this task for Burma, and have contented themselves with saying that further enquiry will be necessary before the new constitution can be framed. A settlement has to be arrived at with the Government of India on the difficult financial issues and questions involved in separation. The question of the defence of Burma has to be decided, and a perusal of the long list of subjects classed as Central in the Devolution Rules will give some idea of the number of the functions hitherto discharged by the Government of India which the Government of Burma will now have to take over, and of the amount of work involved in making the necessary preparations. It is obvious that the factor of time is one of great importance, and apart altogether from the political advantage of this course in the present state of feeling in Burma, it would be convenient to the Government of Burma if the Government of India and His Majesty's Government could see their way at once to announce that they accept in principle the recommendation in favour of separation.

5. The Government of Burma however recognize that there may be difficulties in the way of this course, and that the view may be taken that the question of separation, like the other recommendations of the Statutory Commission, must be left open to discussion at the Round Table Conference. If this is the decision, then I am earnestly to request that the Governor-General in Council may be pleased to make two suggestions for the consideration of His Majesty's Government. The first suggestion is that if possible the question of the separation of Burma should be taken

up first at the Conference. It is a simple issue—simple at any rate compared with the other questions which the Conference will discuss—and it should not take much time to come to a decision. Moreover the course suggested, besides being convenient to the Government of Burma, is obviously logical. There are many questions connected with the future constitution of British India and with the relations between the Centre and the Provincial Governments which cannot confidently and permanently be decided unless the problem of Burma is first cleared out of the way. The second suggestion is that if His Majesty's Government on a preliminary examination of the subject before the meeting of the Conference decide provisionally that they are prepared to accept the recommendation in favour of separation, they should at once apply themselves to the questions (1) to what kind of body they propose to entrust the further enquiry into the new constitution of Burma contemplated by the Statutory Commission and (2) what the personnel of this body should be. I am to explain that if His Majesty's Government decide that a Commission or a Committee should be sent out to make this enquiry, the Government of Burma attach the greatest importance to its arriving in Burma not later than the beginning of next January. Otherwise a whole year may be lost, and the time-table for Burma may fall hopelessly behind that of India. If the procedure suggested is adopted, it is hoped that His Majesty's Government may be able to announce their decision on the question of principle early in November next, and that if the principle of separation is accepted, they may be able simultaneously to appoint the Commission of Enquiry.

6. *The Machinery of Enquiry.*—The Government of Burma venture to offer some observations on the two questions mentioned at the end of the last paragraph, since they are questions which have aroused considerable interest in Burma, but they recognise of course that since Parliament cannot divest itself of responsibility for the form of the new constitution of Burma, Parliament must also decide what method of enquiry will be most likely to give it the sort of advice it will require before it can come to confident conclusions on the subject of the new constitution. The choice probably lies between two alternatives. One course would be for Parliament to adopt in the case of Burma the same plan as was adopted in respect of the Indian Constitutional Enquiry. The enquiry would be entrusted to a Parlia-

mentary Commission appointed by Royal Warrant, but the Burma Legislative Council would be invited to appoint a Select Committee chosen from its elected and nominated members to collaborate with the Royal Commission. The other course would be for His Majesty's Government to appoint a Committee in which Burmans (the term being used in its widest sense) would be included. The latter plan is the plan which seems to be most generally favoured in Burma, and on the 11th August 1930 the Burma Legislative Council adopted a motion recommending ' That this Council urges His Majesty's Government to appoint a Royal Commission consisting of an equal number of members of Parliament and of Burmans to frame a constitution in consultation with the people of Burma '. The Government of Burma have no doubt that His Majesty's Government will give due consideration to the view expressed by the Burma Legislative Council. The impulse behind it is the natural feeling that Burmans ought to find a place on a Commission appointed to consider the new constitution of Burma. It must also be observed that the difficulties in the way of adopting the second plan are not nearly so formidable as those which in the case of India led to the rejection of the plan. In Burma the constitutional problem is far simpler than in India, and the problem offered by minority communities is not so complicated. Still this latter problem does exist, and in the judgment of this Government, it constitutes an obstacle to the plan of a mixed Committee. If such a Committee were appointed, minority communities would not be satisfied unless they were represented on it, and it would be necessary to include in the Committee a Karen, an Indian and a non-official European as well as at least four Burmans. The Parliament would no doubt require an equal number of representatives appointed by itself from England, and if this plan were adopted, it would seem impossible that the Committee should consist of less than 14 or 15 members. A Committee of this size appears to the Government of Burma to be much too large and unwieldy. It would be open too to the obvious objection that many of the members of the Committee would already be deeply committed to a particular view, and however open a mind they might desire to keep, would not be able to give really impartial, unprejudiced advice to Parliament. The essential requirements of Parliament, the Government of Burma conceive, are in the first place that all sections of political thought in Burma should be given full opportunity of expressing their views



and pressing their demands; secondly, that a Select Committee of the Burma Legislative Council elected by the Council itself should be placed in the position of hearing the evidence tendered and on the basis of that evidence of advising what measure of constitutional advance is thought desirable in Burma and what checks and safeguards, if any, should be imposed; and finally that a body of quite impartial persons responsible to Parliament itself should sift the evidence placed before it, and after giving due consideration to the views expressed by the Select Committee of the Legislative Council should advise Parliament what the new constitution should be. The Government of Burma are driven to the conclusion that this is the most logical and consistent plan, and they believe it to be the only plan which, besides keeping the size of the Commission at a reasonable figure, gives minority communities an adequate share in the enquiry. So far as Burma is concerned this plan has so far worked well. The Burmans have had evidence of the value of a perfectly unprejudiced and impartial Commission, and the verdict of that Commission in favour of separation has been generally welcomed. The Government of Burma are in favour of carrying on the further enquiries that are necessary in Burma on the same lines, but in order that the Burma case may be presented in as complete a manner as is possible they consider that the Select Committee of the Burma Legislative Council should be invited to England to confer with the Joint Select Committee of Parliament to which no doubt the draft Government of Burma Bill will be committed in due course.

7. *The New Constitution.*—The new constitution will be the subject of the enquiry of the body referred to in the preceding paragraph, and the Government of Burma have not yet formulated their views. They are engaged on that task now, and are preparing a memorandum for presentation to the Commission. There is however one point which it is necessary to emphasize at this stage, for the Government of Burma think that reference should be made to it in the terms of reference to the Commission. It is of great importance that it should be made clear beyond all possibility of doubt or question that the separation of Burma will not involve for Burma any departure from the statement contained in the preamble to the Government of India Act, 1919, that the objective of British policy is the progressive realization of responsible government in British India as an integral part of the Empire. As the Commission say, that

statement constitutes a pledge given by the British nation to British India. When the pledge was first announced in August 1917, Burma was a part of British India. The pledge therefore was given to Burma as well as to India, and even if Burma is separated from India, the pledge still stands for Burma unimpaired and in all its force. The Government of Burma could not possibly agree to separation on any other terms, and they trust that His Majesty's Government will see fit to set at rest any doubts that may still exist on the subject by the wording of the terms of reference to the Commission. They attach importance to the point, for the allegation is frequently made in that section of the public press of Burma which is opposed to the recommendation of the Statutory Commission that the British Government will seize the opportunity of separation to reduce Burma to the status of a Crown Colony.

8. It has already been stated that this Government is in agreement with the Commission that due provision should be made in the new constitution of Burma for the protection of legitimate interests of minority communities in Burma, and they also wish to express their acceptance of the first and the fourth of the four major principles laid down by the Commission in Part I of Volume II of their Report. Matters of this kind however can suitably be treated in the Government's memorandum for the Commission of Enquiry, and at this stage there is only one other consideration which it is thought necessary to stress. The problem of Burma differs from that of British India in that the new Government of Burma will combine in itself the functions both of the Central Government and of the Provincial Governments of British India. It will not be possible therefore to apply to Burma exactly the same constitution as may be devised for British India. It should be remembered however that Burmans will compare jealously the form of government proposed for Burma with that accorded both to the Centre and to the Provinces in British India, and the Government of Burma hope that the Commission of Enquiry will find it possible to propose for Burma a measure of constitutional advance not less liberal than that decided on for British India.

9. *Financial Settlement with the Government of India.*—The financial aspect of separation is naturally one of much importance. Mr. (now Sir Walter) Layton made some remarks on the subject in Part VIII of Volume II of the

Commission's report, and though the Government of Burma wish it to be clearly understood that they do not accept the assumptions made by him, they accept his general conclusion that there is no strong financial objection to separation. It is obvious however that separation must raise many complex questions of a financial or semi-financial nature. Some of them may be a subject of controversy between the Government of India and the Government of Burma, as for instance the question what share of British India's unproductive debt should properly be made over to Burma. Other questions may not be so controversial, but it might conceivably be convenient to one of the two countries, while making little difference to the other, that in the first instance at any rate a particular solution out of two or three alternatives should be selected. The future currency system of Burma is a case in point. There are at first sight three possible courses open to Burma. Either she might elect, on terms to be arranged with the Government of India, to retain for some time to come the Government of India's currency, or she might elect for a system analogous to that of Ceylon, or she might elect to cut adrift altogether from the Indian currency system. On the other hand, it might be convenient to the Government of India if for some time longer at any rate the first of these three courses were adopted. The matter is obviously one for discussion and negotiation, and many other questions will similarly require settlement. They relate to such matters as Ways and Means, Savings Banks deposits, Provident Fund deposits, Post Office Cash Certificates, the terms on which the Burma Railways should be made over to the Government of Burma, the taking over by the Government of Burma of lands and buildings belonging to the Government of India and other similar subjects. The important thing at this stage is to settle on a procedure which will be acceptable to both Governments. The Government of Burma have already had the advantage of informal conversations with the Government of India on the subject, and they have reason to believe that the procedure suggested below will be accepted by the Government of India. A list of the more important subjects of the kind requiring settlement has already been drawn up by the Government of India. It is believed that by correspondence and negotiation between the two Governments it will be possible to reach not indeed agreement on all the points at issue but an agreed statement of the case, and it is proposed that this agreed statement of the case (or if even this measure

of agreement cannot be reached, the views of the two Governments) should be laid before a Board of neutral and impartial arbitrators. These arbitrators would be men with expert knowledge of finance whose decision would be accepted as authoritative, and it is proposed that their decision should be final. Representatives of the two Governments would be attached to the Board, not as members but as assessors and advisers. Their function would be to watch and present the case of their respective Governments. It is considered that even though there may be no difference of opinion between the two Governments regarding some of the points at issue, all such points should be referred to the Board for final decision. This appears to be a necessary safeguard for both Governments, for it is advisable that public opinion in both countries should be satisfied that whatever decisions are made are the decisions of an impartial neutral authority.

10. If this procedure is accepted, two further points require consideration. In the first place, the Government of Burma hope that the Board of arbitrators will be able to sit and to submit their report before the end of the next cold weather. Here again the time factor is of great importance. It is essential that both Governments should know as early as possible what the exact financial consequences of separation will be. The Government of Burma attach even greater importance to the next point. As the Government of India are aware, the Finance Department of a Local Government is occupied almost entirely with expenditure questions, and the officers of a Local Government have not as a rule experience and practical knowledge of currency, exchange, and other questions appertaining to the domain of what is usually known as high finance. The Government of Burma at any rate have no officer who can lay claim to experience or knowledge of this kind, and in respect of many of the questions which will come up for negotiation and settlement they have no one who will be able to treat on terms of equality with the experts of the Government of India. They will thus be in a position of great disadvantage. If therefore the Government of India and the Secretary of State for India agree to the procedure suggested in the preceding paragraph of this letter, I am to express the earnest hope of this Government that they may be provided with the assistance of some one who has the sort of expert knowledge referred to above. If the Government of Burma may venture to make the suggestion, Sir Edward Cook,

sometime Secretary to the Government of India in the Finance Department and until recently Financial Adviser to the Government of Siam, has exactly the type of experience required, and the Government of Burma would be very glad if arrangements could be made to secure for them the benefit of his services. The selection of the adviser however must necessarily be left to His Majesty's Secretary of State for India, and the main point I am desired to make is the absolute necessity for an adviser of this kind to assist in the preparation of the case for Burma, and in presenting and arguing that case before the arbitrators. The Government of Burma would agree to any terms the Secretary of State may find necessary to secure the type of man required. If it is agreed that the proposed Board of arbitrators should finish their work before the end of the ensuing cold weather, it is obviously desirable that the financial adviser asked for should be sent out to Burma with the least possible delay, and I am to ask that the Government of India will treat this recommendation as one of particular urgency, and that they will address the Secretary of State on it by telegram before coming to a decision on the other questions raised in this letter. I am to suggest that in view of the urgency of the matter, the action proposed might reasonably be taken by His Majesty's Government without waiting for or prejudice to the final decision on the principle of separation.

11. *The Defence of Burma.*—I am next to deal with the question of defence. It is of course a cardinal question in itself, and it has in addition grave constitutional and financial implications. The military aspect will no doubt be studied closely by the General Staffs in India and at home, and the Government of Burma naturally speak on this side of the problem with great reserve. They propose however to make some remarks on the broader aspects of the matter.

12. In considering the constitutional problem of British India, the Commission were greatly impressed by the formidable nature of the obstacle to the ultimate attainment of the purpose avowed in the declaration of 20th August 1917 offered by the functions and composition of the army in India. Those functions comprise in the first place frontier defence. The land frontier of India exposes her in the North-West to a constant and pressing danger of a magnitude which is quite without parallel in any other part of the Empire, and the Commission came to the conclusion that for a very long time to come it would be impossible

for the army entrusted with the defence of this frontier to dispense with a considerable proportion (a) of British troops of all arms, (b) of British officers in Indian regiments and (c) of British personnel in the higher command. The other main function of the army in India is the maintenance of internal order, and in view of the bitter communal feuds and sectional commotions which have so frequently disturbed the peace of India in recent years, here again the Commission decided that there was great need for the continued presence in India of British troops. Their supreme value in communal disturbances lies in the fact that their neutrality is universally recognized, and that for that reason in particular they inspire general confidence. As regards the composition of the Indian army, the Commission were impressed by 'the astonishing admixture' in India 'of races of widely different military capacity,' and by the fact that the rank and file of the Indian army is drawn almost entirely from certain martial races. One inference drawn is that the problem of providing the Indian army with a non-British command is one of quite peculiar difficulty. Another is that 'the formation of an Indian national army drawn from India as a whole in which every member will recognize the rest as his comrades, in which Indian officers will lead men who may be of different race and in which public opinion will have general confidence' is also a task of the greatest possible complexity. Consequently the Commission found themselves in a dilemma. On the one hand, the declaration of 20th August 1917 stands in its full implication, and that declaration contemplates the ultimate building up of an entirely Indian army controlled by Ministers responsible to an elected legislature. On the other hand, the Commission are clear equally that for a long time to come there must be a British element in the Indian army, and that as long as that element exists, the army must remain under the control of Parliament and cannot be placed under Ministers responsible to an elected Indian legislature. Their final conclusion was that the obstacle which the composition and functions of the army in India present to the more rapid development of responsible Government might be removed if the defence of India were treated as a matter which should fall within the responsibilities of the Governor-General advised by the Commander-in-Chief as representing the Imperial authority instead of being part of the responsibilities of the Government of India in relation to the Central legislature.

The substance of the plan is that the defence of India should be recognized not as a purely Indian problem but as a matter of supreme concern to the whole Empire, and the Commission made it plain that a solution based on this principle could probably be brought about only by a definite agreement between India and Great Britain acting on behalf of the Empire.

13. The report leaves the Government of Burma in some doubt whether the Commission intended to suggest that Burma should adhere to this scheme. It is clear from the Appendix to his Financial Report that Sir Walter Layton contemplated that the army in India would continue to defend Burma in return for a fixed contribution from Burma, and his Financial Report proceeds on the assumption that this contribution would be fixed at 3 crores a year. The Financial Report is incorporated in the Commission's own report, and the Commission nowhere challenge or disavow Sir Walter Layton's assumption. But in dealing themselves with the military consequences of separation in paragraphs 220 and 221 of Volume II of their report, they are very guarded in their language. They suggest, it is true, that after separation Burma may find it advisable to continue to place reliance upon the existence of the army in India, and that if so, Burma must contribute to the cost of that army. They suggest also that the 'military predominance of India may fitly contribute to the more efficient organisation of the defence of both countries without imposing upon Burma dependence on India in non-military spheres'. But they then proceed expressly to disclaim any intention of laying down the lines on which the defence of India and Burma should be co-ordinated, and they conclude by envisaging a scheme under which the troops required in a separated Burma for watch and ward on the frontier and for internal security would be under the control of the Governor, while in the event of a serious emergency on the frontier, Burma like other parts of the Empire would fall back on the Imperial authorities. They add that it would be open to the latter by agreement with the authorities in India to arrange a concerted scheme of defence.

14. If the intention was that Burma should be included in the scheme described in paragraph 12 above and should be required to contribute towards the cost of the army in India, the Government of Burma must make it quite clear that they cannot agree that the proposal should be accepted.

They do not believe that this proposal commended itself to the Commission, and for that reason they do not think it necessary to set out the grounds of their objection in any great detail. It is a condition precedent of the scheme that it could not be introduced in India except by agreement with India. Similarly it could not be applied to Burma except by agreement with Burma, and this Government see no prospect of that agreement being secured. It is impossible to suppose that the people of Burma would acquiesce in a system whereby the vital question of her defence not only against external aggression but also against internal disorder would be made over to an army controlled by the Governor-General assisted by the Commander-in-Chief of an entirely separate country. This statement receives strong support from the trend of the speeches in a recent debate in the Burma Legislative Council. The debate took place on a resolution that steps should be taken to organise a Burman Army and the resolution was unanimously passed by the non-official members present in the Council. In the next place, the application of the scheme to Burma would involve constitutional anomalies and would be inconsistent with sound constitutional theory. The troops could not be called out in aid of the civil power except by the Governor of Burma himself. To whom would he be responsible in the exercise of that power? He could not be made responsible to the Governor-General of India, for the Governor-General of India would then be involved in responsibility for the internal security of Burma. If on the other hand he were responsible directly to Parliament, the position would be almost equally difficult, for in that event troops under the control of the Governor-General of India would be used for purposes for which that authority would have no responsibility, and of which he would have no knowledge. The position would become even more difficult if the Governor of Burma found it necessary to apply for reinforcements from India. The Government of Burma are also satisfied that the scheme would be unworkable in practice and would give rise to friction and discontent. Already there have been instances of friction. The recent disbandment of the Burma Sappers and Miners caused great resentment in Burma, and there is also a feeling in Burma that especially in the matter of strategic roads, the North-East frontier is neglected. The Government of Burma do not mention these matters in any spirit of complaint. They recognize that the disbandment of the Burma Sappers and Miners was



justified from the strict military point of view, and that as long as Burma and India are treated together for purposes of defence, available funds must be spent on the really vulnerable frontier. Their point is that if friction has occurred in the past, it must occur much more frequently under this system in the future. It must be expected that after separation Burma will develop her own national consciousness and sentiment, and that her outlook will tend to diverge more and more from that of India. The Government of Burma have no doubt that the only satisfactory scheme is a scheme based on the principle that if Burma is to be separated from India at all, the separation should be complete and should extend to the military as well as to the political sphere. Such a scheme would not prevent co-operation and concerted effort between the two countries in the event of a serious emergency. The principle is so clear that only the most overmastering considerations would justify any derogation from it. The whole trend of the Commission's report is to the effect that in Burma such overmastering considerations do not exist, and the Government of Burma earnestly trust that the principle will be accepted. It seems indeed to be the principle underlying the plan sketched in outline at the end of paragraph 221 of the report.

15. If this principle is accepted, Parliament must remain for some time to come responsible for the defence of Burma, and it will be the duty of the body entrusted with the enquiry into the new constitution to consider through what agency in Burma Parliament should exercise its responsibility. The whole question is one which raises important constitutional implications. At this stage all that the Government of Burma think it necessary to say is that they agree with the Commission that for all practical purposes it will be sufficient if what may be called the Burma Defence Force is organized primarily (a) for policing the frontier and repelling local raids and (b) for internal security. If serious danger occurs, Burma will rely like all other parts of the Empire on the Imperial authorities. It is probably unnecessary to elaborate these points, but I am to refer briefly to the question of frontier defence. The Northern frontier where Burma abuts on Thibet may be shortly dismissed. The frontier itself runs along a line of lofty peaks, and between the frontier and the most northern outpost of Burma, Fort Hertz, there is an immense tract of what is probably the most difficult country in the world. No invasion has ever threatened Burma from this direction

in the past, and none is likely to occur in the future. It is defended at present by the merest handful of Burma Military Police. The Eastern frontier is also difficult, so difficult indeed that the Commission themselves say that 'it seems scarcely possible for any large body of men to cross it,' and they admit that the danger of invasion is very remote. It is impossible to conceive that anything is to be feared from so friendly a neighbour as Siam, and it is relevant to mention that the last big invasion from China took place 160 years ago. Since British rule was established in Upper Burma, there have been raids from China into Burma, needless to say without the knowledge or approval of the Government of China, and raids of this kind may again take place. But they have been invariably small raids, and the frontier battalions of Burma Military Police have been quite competent to deal with them. On the China side of the frontier there is no railhead nearer than Yunnanfu, and between Yunnanfu and the frontier there are no roads fit for motor transport. The country on the Burma side of the frontier is almost equally difficult for the movement of large bodies of troops, and the Government of Burma are confident that expert military opinion will be to the effect that under present conditions an invasion of Burma by a large modern army is quite impossible. There are the usual frontier disputes between Burma and China. Most of them are of a petty nature, and none of them are such that given goodwill on both sides they cannot be settled amicably. There is no reason to suppose therefore that there is any likelihood of a serious armed collision on this frontier. If unfortunately such a calamity did occur, Burma as already mentioned would naturally look to His Majesty's Government for protection. The contingency, however, is very remote, and moreover it could not occur suddenly. For the reasons already given, long preparations would be necessary before a modern army of any size could invade Burma, and while those preparations were being made, His Majesty's Government would have ample time to reinforce the garrison of Burma and to organise on an adequate scale counter-preparations in Burma.

16. If the broad conclusion is accepted that separation should also extend to the military sphere, a number of important and difficult questions are opened up all of which must be decided in the near future. The Burma Defence Force must be adequate for the functions which it is designed to fulfil, and it will be necessary to determine what

the strength of the force should be. The composition of the force will also require consideration. The ultimate objective is that Burma should be defended by troops controlled by a responsible Burman Minister, and this objective cannot be reached so long as British troops are employed. But the Government of Burma are clear that British troops cannot yet be dispensed with, and that British troops must continue to be employed in Burma for some time longer. At present however there are only two British Battalions serving in Burma, and the Indian army furnishes the rest of the garrison. The Battalions of Burma Rifles provide the nucleus of a purely Burman Defence Force, and Burman sentiment will undoubtedly be in favour of replacing gradually Indian Regiments in Burma by Burman units. This question will require examination, but in any case the process must take time, and the further question arises what provision should be made for the intervening period: At least one battalion of the Indian army is now made available for service in the Malay States. Will it be possible for the Government of Burma to make similar arrangements with the Government of India and to retain for some time longer the services of regiments of the Indian army? It is probable that an arrangement of this kind might prove convenient to India as well as to Burma, and without committing themselves to it, the Government of Burma are satisfied that the suggestion is worth consideration. It will also be necessary to review the relation of the Burma Military Police to the proposed Defence Force. One of the objects of the force is the defence of the frontier against raids. That function is at present discharged by the frontier battalions of the Burma Military Police, which is a force controlled by the Government of Burma. It is an inexpensive arrangement, and the Government of Burma believe it to be an efficient one, and it will no doubt be continued. But if it is continued, the issue is at once raised whether the Burma Military Police or alternatively the frontier battalions of the Burma Military Police should not become an integral part of the Burma Defence Force. The Burma Military Police moreover is mainly recruited from India, and it is necessary that the Government of Burma should know at an early date whether the Government of India will allow recruitment of this kind to continue. One of the difficulties inherent in a comparatively small isolated Defence Force is the problem of officers. Prospects of promotion are necessarily restricted, and there is also the

danger of stagnation. There are however similar small isolated forces in other parts of the Empire. This it may be remarked parenthetically is one reason why the Government of Burma cannot see any insuperable objection to Burma taking over her own defence. The King's African Rifles, the Royal West African Frontier Force, and the Soudan Defence Force are all cases in point. In these forces the problem has been solved by a system of seconding officers from the British army for periods of five years at a time, and it is possible that the problem might similarly be solved in Burma by an arrangement by which for some time to come the Government of India would agree to second British officers of the Indian army for service with the Burma Defence Force. This system is already in force with admirable results in the Burma Military Police.

17. This list of questions does not pretend to be exhaustive. The main point which it is desired to make at this stage is that for the solution of problems of this kind the Government of Burma will require expert military advice, and they confidently believe that the General Staff will help them in this matter. The concrete suggestion they desire to make is that if the Government of India are prepared to agree that in the matter of defence Burma should be independent of India, the Government of Burma may be permitted to seek the counsel and assistance of the General Officer Commanding, Burma Independent District. Their present idea is that probably their best plan would be to appoint a small committee to consider and report how best a Burma Defence Force can be organized and what the strength and composition of that force should be. If the General Officer Commanding, Burma Independent District, is willing to preside over that committee, the Government of Burma will be grateful if he may be permitted to do so. He will be consulted both as to the personnel of the committee and as to the terms of reference to it. Among the members it will probably be necessary to include the Deputy Inspector-General of Military Police, and another Civil Officer representing the Local Government. The committee will be an informal one, and might be allowed to proceed without prejudice to the decision of the main question. When the preliminary scheme has been prepared, the General Staff will no doubt be willing to advise on it, and the Government of Burma have no doubt that the scheme itself will depend in the first instance on the assistance and

co-operation of the Government of India. They are confident that that assistance and co-operation will not be denied.

18. That is the note on which they wish to end this letter. They have been compelled to support the recommendation that Burma should be separated from India, but they hope that the Government of India, will accept their assurance that they have not been actuated by any spirit of animosity towards India or any feeling of dissatisfaction or discontent with the Government of India. On the contrary their relations with the Supreme Government have invariably been of the most cordial nature, and they take this opportunity of expressing their gratitude for the consideration which has always been shown to them and for the support which they have always received. They have been driven to support the recommendation in favour of separation by the logic of events. They believe that the political connection between the two countries, while it has been advantageous to both countries in the past, is no longer consistent with modern political developments, and they are fortified in this conclusion by the unanimous verdict of an impartial Commission. Nevertheless, for many reasons they view the prospect of separation with regret, and it is their earnest hope that if separation is the final solution, it will be carried through in a spirit of friendliness and goodwill, and that it will leave behind it no aftermath of bitterness between the people of India and the people of Burma. It is in this spirit that the Government of Burma will approach the negotiations which will be necessary if the principle of separation is conceded. This letter has shown that there are many directions in which the Government of India can assist Burma even after separation, and it is believed that many problems will emerge in the course of discussion in which without sacrifice of principle or material interests, one country can ease the process of separation for the other by a considerate and conciliatory attitude. Separation will loosen the political ties between India and Burma, but there is no reason why it should affect the ties of friendship which should subsist between two countries which have been associated under one Government so long and between whom there is so close a trade connection. The Government of Burma trust that friendly relations will be maintained, and they are greatly attracted by the suggestion that a Trade Convention should be made between India and Burma. They propose to apply themselves to the subject, and they

hope that they may be able in due course to submit proposals for the consideration of the Government of India.

19. The views expressed in this letter are those of the Governor in Council acting with his Ministers.

---

Letter from Mr. M. G. Hallett, C.I.E., I.O.S., Officiating Chief Secretary to the Government of Bihar and Orissa, No. 4368-A. R., dated the 23rd August 1930.

I am directed to refer to Mr. Lewis' letter No. F. 67/30-R., dated the 24th June 1930, asking for the views of the Government of Bihar and Orissa on the recommendations of the Indian Statutory Commission, and in particular on those specified in paragraph 3 of the letter.

2. I am now to submit the opinion of the Government of Bihar and Orissa on the matters raised in the following parts of the Report:—

Part I, Chapters 2 and 5,

Part II,

Part III, Chapter 2,

Part IV, Chapters 1 and 4,

Part VIII,

Part IX,

Part X,

and also the report on the reception given to the recommendations in the province.

I am to add that on those points to which no specific reference is made in the opinion sent herewith, it may be taken that the local Government, in order to keep their reply within suitable limits, have intentionally refrained from comment, in some cases because it seemed unnecessary to record a mere general agreement and in others because Bihar and Orissa are not directly interested to an important extent.

---

*Opinion of the Government of Bihar and Orissa on the recommendations of the Indian Statutory Commission.*

## PART I.

### CHAPTER 2:—THE MECHANISM OF ADVANCE.

1. The local Government fully agree with the arguments against a temporary constitution to be revised according

to a time-table, and endorse the recommendation of the Commission that the constitution should be elastic so as to enable adjustment to be made to suit the special conditions actually prevailing in any province at a particular time.

#### CHAPTER 5.—THE NEED FOR SAFEGUARDS.

2. The Governor in Council and the Hon'ble Ministers recognise fully the need for safeguards to prevent a break down of the administrative system and to secure protection for the interests of minorities. They agree that the Governor General and the Governor must be armed with full powers and be in a position to operate unhampered in the event of a break down. They also agree that the Governor General and the Governor are the most suitable authority for the protection of the weaker or less numerous elements in the population.

### PART II.

#### CHAPTER 1.—THE GOVERNORS' PROVINCES.

3. *Paragraph 38. Need for Provincial Redistribution.*  
—The Commission, recognising the force of the opinions expressed in favour of a readjustment of provincial boundaries, recommend the appointment of a Boundary Commission. They however, have paid special attention to the union which now exists between Bihar and Orissa, which they regard as a glaring example of the artificial connection of areas not naturally related; and the Sub-Committee appointed by them to examine this question were in favour of the creation of an Orissa province, consisting of the Orissa Division of Bihar and Orissa, small portions of Bengal and the Central Provinces, and a large portion of the district of Ganjam in Madras. They recommend that the problem of the union of the Oriya-speaking areas as a separate unit should be the first to be considered by the proposed Commission.

The amalgamation of the Oriya-speaking tracts stands on a very different footing from minor readjustments of provincial boundaries. It has been recognised that the grievance of the Oriyas is well-founded and the demand has the substantial support of the people. The case of Orissa thus satisfies what is regarded by the Commission as one of the most important tests to be applied to the consideration of these problems, that there should be the largest

possible measure of agreement on the change proposed. The Commission proposal involves the removal from the existing province of Bihar of nearly one-fifth of the total area, and of a population of nearly five millions out of a total population of 34 millions. The future constitution of both areas is thus greatly affected by the proposals, in particular in regard to such matters as the strength of the Council, communal representation and finance.

If a Boundary Commission is appointed to deal with adjustments all over India it will take many years to complete its labours. The problem of Orissa is, however, urgent; delay over its solution will cause resentment among the Oriyas, whose hopes have been raised by the recommendation of the Commission, and will adversely affect the interests of Bihar which cannot have a settled constitution or a definite financial settlement till this problem is decided. The local Government, therefore, strongly support the recommendation of the Commission that it should be taken up at once, and press for the appointment of a Boundary Commission to examine the question during the forthcoming cold weather, so that, if possible, a decision may be arrived at as to the future constitution of both areas and necessary provision embodied in the revised Government of India Act. Even if this suggestion is accepted and a decision is arrived at on the financial problem, which has hitherto been the stumbling block in the way of any proposals put forward, some time must inevitably elapse before the new province can actually come into existence; new buildings for the headquarters of the province will have to be constructed, and numerous minor problems of administration will have to be decided. Though the date on which the new constitution will come into effect in other provinces is uncertain, it may be assumed that arrangements for the inauguration of Orissa as a separate province cannot be complete before that date. As will appear from the views of the local Government on the backward tracts, the Boundary Commission should also consider the situation in Chota Nagpur and the Santhal Parganas. The Government of India Act should, therefore, make provision for a temporary constitution of the province as it exists at present as well as for the future constitution of Orissa and the backward tracts.

4. *Paragraph 44. The Principle of Flexibility.*—The Commission attach great importance to a flexible constitu-



tion and consider that the right method lies in the construction of a constitutional frame work, capable of adjustment to the peculiar needs of each province and rendering possible the constitutional progress of provincial government by gradual growth not by artificial jumps. With this view the local Government entirely agree; there are many points of detail on which a different decision may have to be taken for each province, and such points can best be settled in the light of experience. In this province the suggested separation of Orissa, to which reference has already been made, may necessitate a recasting of many of the details of the constitution but, if the framework is provided by the Government of India Act, it should be possible to settle these details without any further parliamentary enactments.

*5. Paragraphs 45 and 46. Difficulties of Dyarchy. Unitary Governments to be established.*—Though the system of dyarchy has been worked with some measure of success in the province of Bihar and Orissa and has afforded a training in the task of Government, the local Government concur in the objections to the present system and recognise that the growth of responsibility will be hindered by its continuance in any form. They therefore approve the recommendations of the Commission that there should be no division of subjects but that there should be unitary cabinets, with joint responsibility for the whole field of provincial government. In submitting their provisional views to the Commission, they advocated that an exception should be made in regard to law and order, and discussed various alternative solutions of this problem. To this view they no longer adhere, and they recognise the force of the arguments put forward by the Commission in favour of treating law and order on the same basis as other subjects, and in particular the argument that responsible government cannot be achieved without this change. They are not blind to the risks which may occur or the difficulties which may be experienced, especially if the new system comes into effect after a period of civil commotions and disturbances, such as are occurring at present; and there must be no whittling away of the safeguards provided in the constitution. The transfer of this subject will, also, add greatly to the burden of the Governor who, in the discharge of his duty of preserving the safety and tranquillity of the province, will have to be in the closest touch with the administration of this subject. His position in fact will be more

difficult than that envisaged by the local Government when, in submitting their provisional opinion to the Commission, they suggested that a possible solution of the problem would be for the Governor to take himself the portfolio of law and order, and, accordingly, the Governor and his civilian colleague (the other members of Government dissenting) press emphatically the point taken in the former memorandum that it will be necessary to provide the Governor with the assistance of a senior officer of the service with a status similar to that of the present Member of Council—a proposal which will be developed in dealing with paragraph 54 of the Report.

6. To give the proposed system every chance of success, it is essential that there should not be frequent changes of Ministers and of the Cabinet, but the local Government anticipate that at least in the early years a newly-formed Cabinet may be very unstable owing to the fact that there is at present no well defined party system, and that the Council may for some time to come be divided into groups rather than parties. The principle of joint responsibility also is new to Indian politics and not yet fully appreciated by the members of the legislature. Protection, such as that suggested by the Commission, will be needed to improve the chances of stability. The first safeguard proposed by the Commission, that ministerial salaries should be fixed by a provincial statute, is a suitable measure to further this object; but the second safeguard, that the only vote of censure which could be proposed would be one against the Ministry as a whole, carried after due notice, hardly goes far enough; the local Government would prefer that further protection should be given by providing in the Government of India Act that a vote of censure against the Ministry must be passed by a two-thirds majority of the members present in the Council Chamber. It would still, however, be possible to carry by a bare majority a vote which might necessitate resignation, *e.g.*, the refusal of a major budget demand or the rejection of an important measure of legislation.

7. As regards the composition of the Cabinet, the local Government consider that at least in this province there will be no need for Ministers without portfolios, and also that it will be undesirable to create an inner circle of administration by leaving some Ministers outside the Cabinet. The Ministry would be too small for any such distinction, which might also have the undesirable effect of

blurring joint responsibility. To the suggestion that there should be Under-Secretaries in the British sense, there is no objection; the Government of India Act [section 72 (4)] already provides for the appointment of Council Secretaries, and this provision should be retained. Such appointments will form a useful training ground and might, though this appears more doubtful, have the effect in some cases of contributing to an easing of communal strain. It would certainly tend to increase the stability of the Cabinet where the group rather than the party system obtains.

8. *Paragraph 48. Composition of the Ministry.*—The Commission propose that the Governor should have power to include in the Ministry one or more persons who are not elected members of the legislature, and contemplate that ordinarily such persons should be experienced officials though on occasions non-officials might also be included. The local Government agree that non-officials should be eligible for appointment to the Cabinet. It may well happen that the appointment of an experienced non-official not in the Council, but enjoying the confidence of the people and commanding the support of many of the elected members, will strengthen the Cabinet.

9. The proposal for the appointment of an official minister has been the subject of much criticism from Indian politicians; they anticipate that as a general rule the official Minister will be given charge of the portfolio of law and order, and they regard the suggested transfer of law and order, when read in the light of this further proposal, as mere camouflage. Such an appointment would from the first be viewed with disfavour and distrust both inside and outside the Council, and it would clearly be impracticable to force any such appointment upon an unwilling Cabinet, while even if the appointment were made at the request of the Ministers, the position of the official Minister, and consequently of the whole Cabinet would be by no means secure, unless it had a safe majority in the Council, and in the early years the prospect of a Cabinet with such a majority is remote. The result would be that the departments of which the official was placed in charge would be singled out for attack, with the probable result that a vote of censure would be passed against the Ministry. It would be impossible for the Governor to force the official upon a subsequent Ministry, and he might, therefore, be faced with premature retirement through no

fault of his own. It is hardly likely, therefore, that officers, except possibly officers on the verge of retirement, would willingly accept such an insecure position, even if they received some slight compensation in the form of an enhanced pension. The principle of joint responsibility would also make the position of such an officer difficult; even if he received the support of his colleagues in the administration of the portfolio of which he was in charge, he might have scruples about agreeing to proposals of other departments and accepting a different standard from that to which he had been accustomed. Holding this view, the local Government consider that such an appointment will be the exception rather than the rule, and that this device for making official experience available for the Ministry and the Governor will not ordinarily be effective. They would, however, keep the Governor's power to appoint an official to meet any exceptional circumstances that might arise; it might, for instance, be desirable to make such an appointment temporarily to avoid an interregnum.

10. *Paragraphs 49 and 50. Overriding powers of the Governor.*—With the complete transfer of all subjects to an unitary Government in the manner proposed, it is impossible under present conditions for the Governor to be merely a constitutional Governor. The need for safeguards, chiefly to prevent internal disorder and to protect minorities, has already been accepted; and the duty of seeing that they are effectively applied must rest, subject to the control of the Governor General, with the Governor. The limited power of interference which it is proposed to give should not tend to hamper the growth of a sense of responsibility and the constitutional development of the province; rather it will facilitate such development by preventing any serious breakdown which might cause a severe set back to progress. The powers which the Commission propose should be given to the Governor are both necessary and suitable; these powers should be clearly defined, and it should also be made clear in the Act that any action taken by him in the exercise of them should not be liable to any challenge. The method of empowering him to secure the fulfilment of any liability in respect of non-voted expenditure in particular requires careful consideration.

11. *Paragraph 51. Procedure at meetings of the Ministry.*—The local Government agree that there should be no statutory rule defining the part which the Governor

should play in the day to day work of the Ministry; he should not be required either by rule or convention to attend all or even the majority of Cabinet meetings, but he should have the right to attend, whenever he thinks fit, and should preside on such occasions. His influence will be exercised chiefly through individual Ministers; who may be expected freely to consult him in all matters. If he associates himself too closely with the ordinary work of the Cabinet, his influence with the Cabinet in important matters will be lessened and the value of his advice will depreciate, while, outside the Cabinet, his position may be misrepresented and he may be regarded by hostile critics as attempting to force his views upon an unwilling Cabinet. There should in fact be no possibility of the suggestion that he is usurping the position of a Prime Minister. ,

When the Governor does not attend the meetings of the Cabinet, he should be kept fully informed of the proceedings, and it should be the duty of the presiding Minister, whether he be the Chief Minister or the Minister dealing with the subject under discussion, to see that a record is kept of the proceedings and communicated to the Governor. A Cabinet Secretariat, such as has recently been created in England, appears to the local Government to be unsuitable to provincial conditions, and in the early years at least the duty of recording and communicating the decisions of the Cabinet at their meetings, which would not be onerous, might devolve on the Secretary of the department concerned with the subject under discussion.

12. *Paragraph 54. The Governor's Role under the New system.*—The Governor's role under the proposed system, as described in paragraph 54 of the Report, will not be a light one. Not only has he certain definite duties imposed upon him by Statute but "upon him more than upon anyone else will fall the duty of counsel and guidance which may bring the advance towards provincial self-government to a happy issue". He will have to keep in touch with the Cabinet, with the Council and with public opinion outside the Council. He will have to make important decisions in the event of a crisis in the Cabinet or the Council. He is given a special responsibility in regard to "backward tracts" and service questions. His position will in fact be no less arduous and no less responsible than it is under the present system, when he has the assistance of at least one senior official as a Member of his Executive Council. In the opinion of the Governor and

his civilian colleague, as already stated, the Governor must be given the assistance of an experienced administrator.

Such assistance the Commission proposed to give through the appointment of an official Minister, but for reasons already stated the local Government hold that such an appointment can seldom be made with any chance of success. It will therefore be necessary to devise some other method of providing the Governor with a trained adviser. In addition to assisting the Governor with official advice, such an officer would also in practice be in a position to relieve him in another way. Though the Governor will have the powers specified in paragraph 50, the Commission no doubt contemplate that he will be in a position to influence the Cabinet and the individual Ministers, so as to make intervention rarely necessary. But the duty of "counsel and guidance" will be no light task for a single individual. Ministers entirely without experience of administration may in many cases be anxious to obtain advice on minor as well as upon major problems which come before them. In dealing with these problems they will receive the assistance of the permanent staff of the departments of which they are in control, but on many questions may welcome further assistance from a trained administrator. If each such case were referred to the Governor personally, he would be overburdened with work, and Ministers might hesitate to consult him except on matters of major importance.

13. The services of such an officer could also be utilised in keeping the Governor in touch with the administration. If the Governor is effectively to perform his statutory duties, he must be kept fully informed of the work of the various departments. It will not be sufficient for him merely to know the decisions of the Cabinet on the major questions discussed at its meetings, but he should also be in touch with the general working of each department, for it is possible that the cumulative effect of a series of acts, each taken individually of minor importance, would ultimately require the exercise of his special powers; to take an extreme but none the less a possible example, a series of decisions, due possibly to ignorance or inexperience, might reduce the police force to such a pitch of inefficiency or lack of discipline as to endanger the tranquillity of the province; or acts might be done, again from ignorance or inexperience, that would affect the administration of a Central subject or the interests of other parts

of India; unless closely in touch with the details of the administration the Governor might not be in a position to intervene, until serious difficulties had arisen.

14. Further, the responsibility of the Governor in whose charge they are placed will be increased by the administration of the Backward Tracts and the care of the Feudatory States of Orissa, while service questions may also in the beginning very frequently demand his personal attention. In all these matters the assistance of a trained administrator will be invaluable.

15. Finally, if conditions were such as to necessitate the declaration of a state of emergency (paragraph 65) in which the Governor took over the whole administration, the need of such an officer would be essential.

16. The civilian members of the local Government, therefore, consider an appointment of this nature to be essential by whatever name it may be called, not with a view to increase the Governor's power of interference, but merely to ensure that he is in a position to carry out his duties.

17. *Paragraph 65. Special provisions for a state of emergency.*—Though the proposed constitution gives the Governor powers to override the decisions of his Ministry in certain important matters, including not merely the negative power to prevent action but positive power to direct action, yet circumstances might arise in which these powers would be inadequate. The local Government agree with the proposals for a state of emergency detailed in paragraph 65 of the Report, which appear to them to be adequate for the purpose.

## CHAPTER 2.—THE PROVINCIAL LEGISLATURE.

18. *Paragraph 67. Maximum life of Provincial Councils.*—With the suggestion that the maximum life of provincial councils should be extended to five years, the local Government are in full agreement. If the maximum life of a Council is only three years there is considerable risk of hasty and ill-advised legislation.

19. *Paragraph 68. Size of Provincial Councils.*—The Commission recommend a large increase in the size of provincial Councils, and consider that an immediate increase to 200 or 250 in the case of the more important provinces is desirable. In view of the large area of the